

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DISTRICT OF COLUMBIA,

Petitioner,

v.

INTERNATIONAL DISTRIBUTING
CORPORATION,

Respondent.

No. 17,833

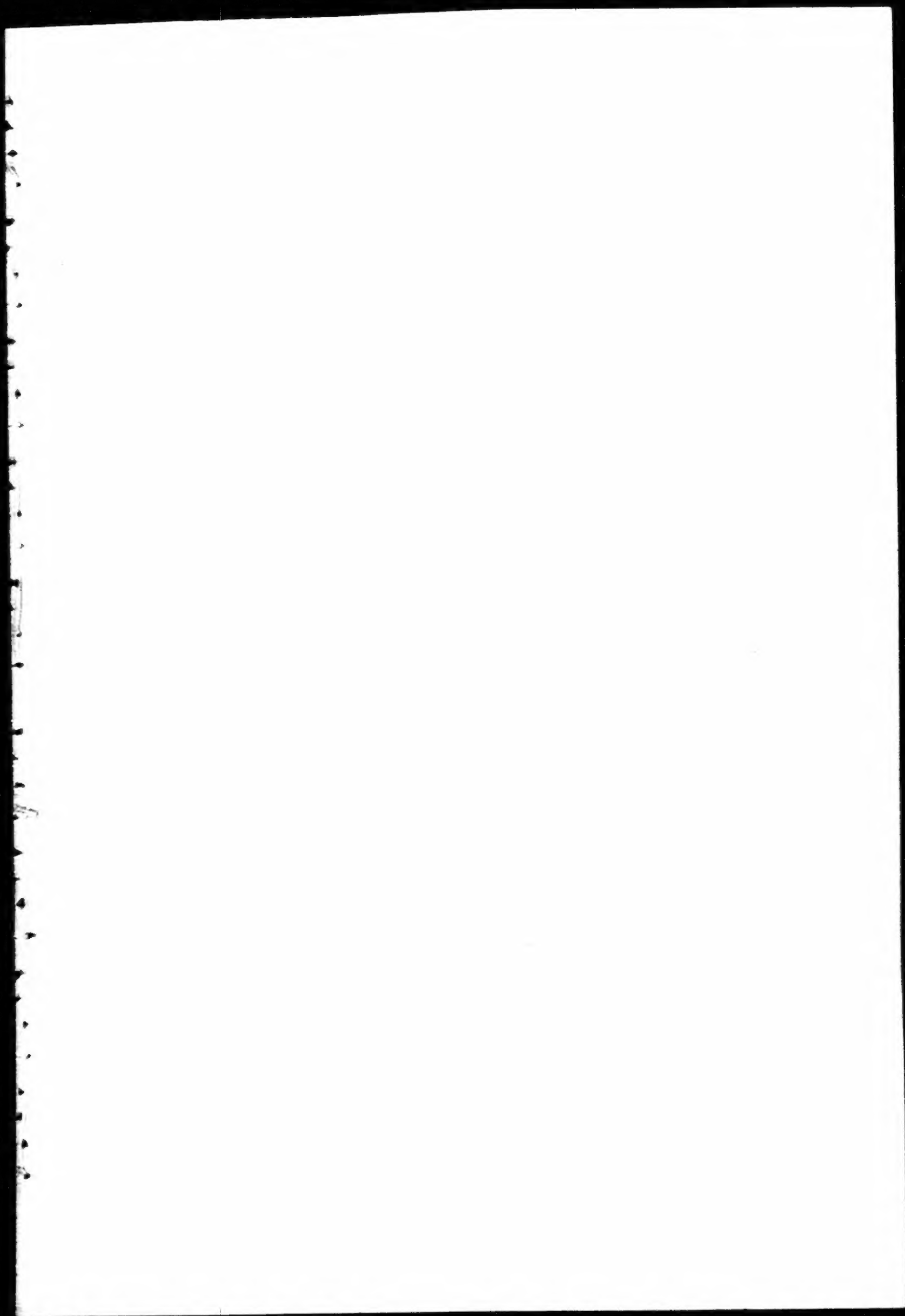
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United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 29 1963

Nathan J. Paulson
CLERK

ON PETITION FOR REVIEW OF A DECISION
OF THE DISTRICT OF COLUMBIA TAX COURT



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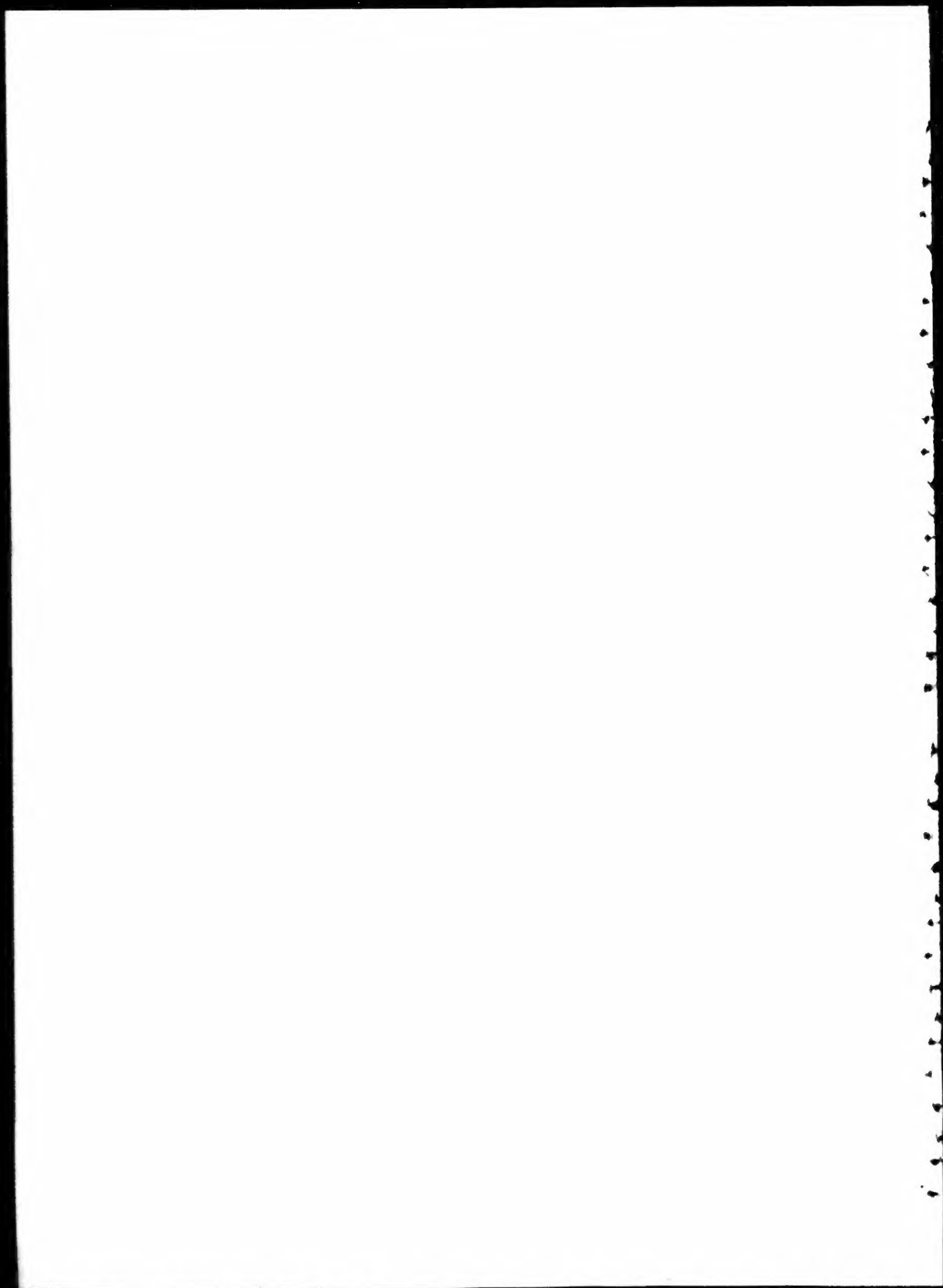
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DISTRICT OF COLUMBIA TAX COURT

INTERNATIONAL DISTRIBUTING CORP.)
a corporation)
3035 - V Street N. E.)
Washington, D. C.)

Petitioner)

vs.)

DISTRICT OF COLUMBIA)
a Municipal corporation)
District Building)
14th and E Streets N. W.)
Washington, D. C.)

Respondent)

FILED

Aug. 1, 1962

Docket No. 1814

PETITION

The above-named petitioner appeals from an assessment of additional Alcoholic Beverage Excise Taxes against it and avers as follows:-

1. That Petitioner is a corporation organized under the laws of the State of Maryland, with its principal place of business at 3035 - V Street, N. E., in the District of Columbia, and is engaged in the whole-sale distribution of alcoholic beverages under authority of District of Columbia Wholesaler's License No. A 15 issued by the Alcoholic Beverage Control Board of the District of Columbia. The Petitioner also engages in business as a wholesale liquor dealer under the authority of Wholesale Basic Permit No. PHI-P-872 and Importer's Basic Permit No. PHI-1-60, issued by the United States Government under the provisions of the Federal Alcoholic Administration Act.

2. The tax in controversy is an illegally assessed District of Columbia excise tax on alcoholic beverages for the months of December, 1961 and January [sic] (February), 1962 on beverages sold by the Petitioner from a United States Customs Bonded Warehouse to authorized representatives of foreign embassies and ministries, their Ambassadors, personnel, etc., and to international organizations authorized to make such purchases under the provisions of Public Law No. 271, 81st Congress, Public Law No. 291, 79th Congress, and appropriate Department of State Publications, the last of which was No. 7253. Said taxes were assessed on May 4, 1962 as follows:-

Month of December, 1961	Alleged Deficiency	\$848. 45
Month of January [sic] (February), 1962	Alleged Deficiency	\$209. 85
	Total	\$1, 058. 30

3. The notice of assessment was dated May 4, 1962 as will appear from a copy thereof hereto attached as Exhibit A, and prayed to be read as a part of this Petition. The tax was paid by the Petitioner on May 8, 1962, under protest, in writing.

4. The assessment of tax is based upon the following errors:

(a) The Commissioners of the District of Columbia, and consequently the taxing authority, have no right to exact a tax on alcoholic beverages sold by the Petitioner to those authorized to be sold under the authorities set forth in Paragraph 2, supra, nor

do they have the authority to assess and collect the tax complained of under the provisions of Section 2-146 of the Regulations Prescribed under the Act of Congress Entitled "An Act to Control the Manufacture, Transportation, Possession, and Sale of Alcoholic Beverages in the District of Columbia, Approved January 24, 1934, as amended."

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The Petitioner sells alcoholic beverages to appropriate attaches of foreign missions and international organizations from a customs bonded warehouse, which bonded warehouse is in complete charge of the United States Government. The thus sold beverages are never permitted to come to rest on the floor housing the stock of liquors which the petitioner maintains; no beverages can be stored in or removed from said customs bonded warehouse without the presence and consent of customs agents.

(b) International organizations are exempt from all property taxes imposed by, or under the authority of, any Act of Congress including such Acts as are applicable solely to the District of Columbia, or the territories.

(c) The District of Columbia excise tax on alcoholic beverages does not apply to members of the armed forces of a foreign country on duty in the United States, under the privilege and immunity created by public law No. 271--81st Congress.

(d) The District of Columbia has no authority or jurisdiction relating to alcoholic beverages imported by the Petitioner under its above set forth Federal permits which beverages are placed in Customs Bonded Warehouses and removed directly from said Customs Bonded Warehouses and delivered to foreign missions and attaches authorized to receive and purchase the same.

(e) The tax imposed by the District authorities is illegal as a matter of International Law in that it does not give the same immunity from tax to foreign personnel on duty in the United States as is given by foreign powers to similar representatives of the United States on duty in foreign countries. The tax is contrary to the practice followed generally by the nations of the world in respect to persons attached to diplomatic missions.

(f) The tax is discriminatory and in violation of the rights of the Petitioner in that the District of Columbia does not impose and/or attempt to collect a similar tax on alcoholic beverages sold to foreign missions or to persons authorized to make purchases under Public Law 271, supra, or Public Law 291, supra, if said sales are made by a liquor dealer from a foreign jurisdiction and who is not licensed as a liquor dealer in the District of Columbia.

WHEREFORE, the Petitioner prays that this Court may hear the proceedings and grant a refund of the illegally collected tax,

plus interest and penalties, and that the Respondent be prevented from seeking to collect a District of Columbia excise tax on such alcoholic beverages sold by the Petitioner from Customs Bonded Warehouses to the members of foreign missions and international organizations heretofore referred to.

INTERNATIONAL DISTRIBUTING CORPORATION

By: s/ Murrel J. Ades
MURREL J. ADES, President

s/ Milford F. Schwartz
MILFORD F. SCHWARTZ
Attorney for Petitioner
Investment Building
1511 - K Street N. W.
Washington 5 D. C.

DISTRICT OF COLUMBIA: SS

I, Murrell J. Ades, being first duly sworn, depose and say that I am the President of International Distributing Corporation, a corporation organized under the laws of the State of Maryland; that I am duly authorized to verify the foregoing petition; that I have read the foregoing petition, and am familiar with the statements contained therein, and that I verily believe that said statements are true.

s/ Murrel J. Ades
MURRELL J. ADES

(SEAL)

Subscribed and sworn to before me this 1st day of August, 1962.

s/ Ann McCann
Notary Public, D. C.

EXHIBIT A

May 4, 1962

International Distributing Corporation
3035 V Street N. E.
Washington, D. C.

ATTENTION: Mr. Ades, President

Gentlemen:

Reference is made to our notice of proposed deficiency dated March 6, 1962, to the hearing held in this office April 18, 1962, and your telephone call to me April 23, 1962.

Pursuant to your request, we enclose bills for the additional taxes shown to be due on our notice referred to above and in similar fashion those taxes shown to be due in our notice dated March 20, 1962.

Your cooperation has been appreciated.

Very truly yours,

W. C. THOMPSON
Supervisor
Sales, Use and Excise Tax Section

Enclosures
LAD/slb

**International Distributing Corporation
Alcoholic Beverage Tax Return**

Month of December, 1961

Additional Alcoholic Beverage Tax due as follows:

	<u>Gallons</u>	<u>Tax Rate</u>	<u>Deficiency</u>
Still Wine Containing More than 14 % Alcohol	16.80	\$0.33	\$ 5.54
Champagne	14.13	0.45	6.36
Alcohol and Spirits	669.24	1.25	836.55
			<hr/>
Total Deficiency			\$848.45
			<hr/>

The above gallonage erroneously claimed as a deduction
in Schedule D, and represents sales made to Embassies and
Legations.

INTERNATIONAL DISTRIBUTING CORPORATION
ALCOHOLIC BEVERAGE TAX RETURN

Month of January [sic] (February) 1962

Additional Tax Due as Follows:	Gallons	Tax Rate	Deficiency (Refund)
1) Sales to Embassies & Legations (Schedule D)			
a) Wine containing 14 ⁰ / _o or less alcohol	38.40	\$ 0.15	5.76
b) Wine containing more than 14 ⁰ / _o alcohol	2.25	0.33	0.74
c) Spirits	252.15	1.25	315.19
2) Schedule A-2 items not entered in Line II of Page 1			
a) Wine containing 14 ⁰ / _o or less alcohol	4.85	0.15	(0.73)
b) Wine containing more than 14 ⁰ / _o alcohol	6.40	0.33	(2.11)
c) Champagne	9.60	0.45	(4.32)
d) Spirits	83.74	1.25	<u>(104.68)</u>
NET DEFICIENCY			\$209.85

----- x
INTERNATIONAL DISTRIBUTING CORPORATION, :
a corporation, :
Petitioner, :
vs. : No. 1814
DISTRICT OF COLUMBIA, :
Respondent. :
----- x

1 Washington, D. C.

Wednesday, October 24, 1962

The above-entitled matter came on for hearing, pursuant to
notice, at 10:00 o'clock a. m.

BEFORE:

THE HONORABLE JO V. MORGAN

* * *

5 MURREL J. ADES

was called as a witness, and being first duly sworn, was examined and
testified as follows:

* * *

DIRECT EXAMINATION

BY MR. SCHWARTZ:

* * *

6 Q What is your connection with the International Distributing
Corporation?

A I am President and owner.

Q President and --

A -- owner.

Q It is a corporation, sir?

A Corporation, yes.

Q Organized under the laws of what state?

A Maryland.

Q Are you licensed to do business in the District of Columbia?

A Yes, sir.

* * *

BY MR. SCHWARTZ:

Q Where is your place of business?

A 3035 V. Street, N. E., Washington, D. C.

Q Now, if your Honor will indulge me just a moment, I want to be sure -- Mr. McCally, you admit they have a Federal Importers License?

MR. McCALLY: No, I do not.

BY MR. SCHWARTZ:

Q Do you have a District of Columbia wholesale liquor license?

A Yes.

7 Q The number is what?

A 15.

Q How long has your company been licensed to do business in the District of Columbia?

A 1934.

Q Does your corporation, sir, also have any Federal licenses?

A Yes, sir.

Q Will you state to the Court what they are?

A There is a Federal -- two Federal permits, a wholesaler permit, and an import permit. The wholesaler permit No. is PHI-I-60. The import No. is PHI-P-872.

* * *

BY MR. SCHWARTZ:

Q Does your company have a Federal liquor dealer's stamp?

A Yes, sir.

Q Now, into how many classes of liquor are your sales divided?

8 A Domestic and Import.

Q With regard to the Imported liquors, into how many classes are they divided?

A The question is Imported liquors?

Q Yes.

A 2 classes. One class would be imported liquor that we import from foreign countries and sell to retail liquor stores in the District of Columbia.

The other class would be liquors that we import from foreign countries to which a Federal stamp is not attached. There is a Federal

stamp required on all liquors imported, on the liquors we sell to retail liquor stores. There is a Federal stamp on liquors sold in the other category. To foreign embassies or their attaches, no Federal stamp is required. That merchandise comes into our premises or remains in a --

MR. SCHWARTZ: Excuse me just a minute. Do you have a customs bonded warehouse?

THE WITNESS: We have a customs bonded warehouse on our premises, class 2 warehouse.

BY MR. SCHWARTZ:

Q How long have you had that warehouse on your premises?

A Since we have been in business.

9 Q Do you do any customs storage in any other place other than in your own customs warehouse?

A On occasions when the warehouse happens to be crowded, we rent space, either in Baltimore or the District of Columbia.

* * *

10 BY MR. SCHWARTZ:

Q Would you tell us what the procedure of your company is with regard to sales to embassies?

A An embassy, such as the Russian embassy, will call our office and tell us they wish to purchase two cases of scotch whiskey. We then give them the bond number of that particular whiskey that is in a

bonded warehouse, under Government supervision. We then call our customs broker, who is also present today --

Q Who is that?

A Mrs. Cosimano. We tell her that the Russian embassy has called and wishes to purchase two cases of scotch whiskey. She proceeds to prepare the necessary papers for the withdrawal of these two cases of whiskey from the bonded warehouse.

THE COURT: Now, that is your bonded warehouse?

THE WITNESS: Not necessarily. It might be on my premises, it might be in Baltimore or in terminal warehouse in D. C. She prepares the necessary papers and she will, in turn, notify the embassy concerned that the papers are being prepared, give them the number of the papers. The embassy then applies to the Chief of the Property Controls Office in the State Department, informs them they wish to purchase two cases of scotch whiskey, on which all Federal taxes will be waived. The State Department then notifies the Treasury Department and in turn, they notify
11 the customs broker, who comes out to our premises, or the warehouse, wherever the whiskey is located, opens up the warehouse, when the necessary papers are presented to him, and releases the two cases of whiskey and the two cases of whiskey are delivered to the Russian embassy, without any payment of Federal taxes whatsoever.

THE COURT: Isn't a Federal employee, or an Agent in charge of your bonded warehouse?

THE WITNESS: A bonded warehouse is under lock and key, of course.

THE COURT: Who has the key?

THE WITNESS: The Government Agent. He doesn't remain on our premises.

THE COURT: But he is in charge. You can't get it out without his permission?

THE WITNESS: Impossible, yes, sir.

THE COURT: Let me ask you this. What is the procedure from the time the product leaves the ship in port, and gets to your bonded warehouse?

THE WITNESS: There is -- importation papers are made out by a customs broker.

THE COURT: Whereabouts -- in Baltimore?

THE WITNESS: Wherever the port of entry is.

12 **THE COURT:** What happens in transportation from Baltimore to your bonded warehouse?

THE WITNESS: On a common carrier.

THE COURT: Under whose supervision?

THE WITNESS: Under -- it is the Government's property. It is actually under the control of the Government.

THE COURT: In what way?

THE WITNESS: Nobody better touch it or do anything with it.

THE COURT: I would like to know the machinery. You say it is under --

THE WITNESS: I would assume that the customs broker, here, could give you the complete procedure. I don't know what to give, for I am unfamiliar with it.

MR. SCHWARTZ: I will show that by the customs broker.

THE WITNESS: I have no control over it.

THE COURT: I understand.

BY MR. SCHWARTZ:

Q Does your firm have a key to this customs bonded warehouse?

A Absolutely not.

Q Are you able to enter it without a representative of the Government?

A Absolutely not. He has the key.

Q Are you familiar with the months of December of

* * *

15

MRS. GLADYS N. COSIMANO

was called as a witness, and being first duly sworn, was examined and testified as follows:

* * *

16

BY MR. SCHWARTZ:

Q What is your occupation, Mrs. Cosimano?

A Customs broker.

* * *

Q Do you have any professional relations with
International Distributing Corporation?

A Yes. I am a broker.

Q You are their customs broker?

A Right

Q Do you know Mr. Ades, who proceeded you on the stand?

A Yes.

Q Do you know Harold Straughan of International?

A Yes.

* * *

17

Directing your attention to a shipment of imported liquors from a manufacturer or a wholesaler to International Distributing Corporation, will you state, to the Court, the details by which such liquors are eventually placed in the bonded warehouse of International Distributing Corporation?

THE COURT: Just take a typical case.

THE WITNESS: First of all, everyone that is handling, physically handling the merchandise, once it touches the pier, the United States pier, they are under bond to the customer, the United States customers. The ship docks at a port of entry, say, for instance, Baltimore, is unloaded to a railroad pier. Customs papers are prepared by a broker, allowing the beverages to move from the port of arrival to what is called a port of entry. Those papers consist of a manifest bill of lading, pier delivery receipt and related documents. In a case where the shipment is large enough to be an entire truckload, there are tithes and seals affixed to the truck. These are also United States customs issued.

18 THE COURT: I didn't understand that last one. When it gets on the truck, whose control is it?

THE WITNESS: When it is on the truck, the truck is owned by a common carrier but that truck is sealed with a tithe and seal issued by United States Customs and that is affixed by an inspector at the pier. It is not to be broken. When that truck arrives in Washington, which is to be considered the port of entry in this case, we are notified by the carrier that the shipment is here.

THE COURT: You say, we -- you?

THE WITNESS: Our office. We then file with the United States Customs Office, at Washington, a warehouse entry. This entry

gives instructions to customs that the merchandise is to be warehoused in a class 2 warehouse located at a particular address, and, in this instance 3035 V Street, N. E.

BY MR. SCHWARTZ:

Q What is a class 2 warehouse?

A It is a proprietors warehouse for bonded goods untax paid, no duty paid on it.

Q Is that the type of warehouse International has?

A It is.

Q Proceed, please.

19 A Once the entry is approved by customs, the warehouseman, who is also customs man, issues instructions to the carrier that he is to deliver at such and such a time to a warehouse mentioned in the entry. The truck has to be there at that time and the officer will also be there. The seal is then broken and the merchandise is removed from the truck and placed directly into the bonded area.

Q When you say officer, which officer do you then mean?

A This is the customs warehouse officer. The only difference that there may be in that particular procedure would be if there was a tax payment or duty payment on part of the merchandise. Then, that would be set aside but the balance, that is not tax paid and not duty paid, is put directly into that bonded area.

* * *

20 THE WITNESS: Well, now it is in the warehouse and after all of the merchandise has been stowed properly, then the bonded warehouse is locked and the customs officer leave. There is no access to the warehouse once he leaves.

 THE COURT: At this point, what is the requirement as far as the bonded warehouse, No. 2, is concerned, in getting the liquor out of the bonded warehouse and put into trade in the District of Columbia? What has to be done?

 THE WITNESS: When it is to be placed on sale, then duty and tax has to be paid at the customs house.

 THE COURT: It is not paid until it comes out. Is that right?

 THE WITNESS: No. It is paid before.

 THE COURT: Suppose, now, that everything has been paid and it has been put in the bonded warehouse. What does the owner or the wholesaler have to do to get the liquor out to sell to retailers?

21 MR. McCALLY: When you say everything is paid, you mean Federal tax.

 THE COURT: Federal tax and duties and so forth.

 THE WITNESS: The Federal tax, when it has been paid, a permit is issued to the customs warehouse officer. He then goes to the warehouse involved. He opens the door and allows just as many cases to be

released as tax has been paid on. No more.

THE COURT: Didn't you say when the liquor is put into the bonded warehouse, the import tax had been paid?

THE WITNESS: No. There is a difference there. On a warehouse entry, no duty and no tax has been paid. When a withdrawal for consumption is filed, that withdrawal will reflect whether duty is to be paid or not. In the case where it is to go to a retail outlet, the duty has to be paid as well as the tax.

THE COURT: That is what I didn't understand. I thought you told me when the liquor is put into the bonded warehouse, the duty has already been paid.

THE WITNESS: No, sir.

* * *

BY MR. SCHWARTZ:

Q This has to do with placing the liquor in trade, as far as retailers are concerned?

A Right.

22 Q Will you state, to the Court, please, the procedure having to do with the withdrawal of a quantity of liquor to -- for sale to an embassy or other Agencies permitted by law?

A. The embassy, first, calls a wholesaler, to place his order. The wholesaler, in turn, calls a customs broker and tells the

broker that this embassy wants so many cases and the bond number from which it is to be withdrawn, the name of the party, also, has to be given, the purchasing party. We, in turn, prepare what is known as withdrawal for consumption, free of duty. This we make up in at least 5 green copies, plus one permit. The original copy of the withdrawal is then sent to the embassy with instructions to either -- well, in all cases, to sign the withdrawal form, and, in some cases, a seal is needed, especially where the embassy is not going to withdraw it under either diplomatic courtesy or public law 291. The embassy, on signing that document, automatically receives the control of the document, all of the merchandise, once that document is returned to us and filed with customs.

Q May I interrupt just a moment. May I ask that this document, which I have, be marked for identification?

THE COURT: Yes.

(Petitioner's Exhibit No. 1

was marked for identification)

23 MR. SCHWARTZ: I show you what has been marked
Petitioners, for identification, no. 1, and ask you if you can identify that?

THE WITNESS: Yes. It is one of our standard forms.

MR. SCHWARTZ: For what?

THE WITNESS: For withdrawal of merchandise free of duty
and tax.

MR. SCHWARTZ: Is this the form to which, you have just made reference?

THE WITNESS: It is.

* * *

I will ask that this document be marked Petitioners, for identification, No. 2.

(Petitioner's Exhibit No. 2
was marked for identification).

BY MR. SCHWARTZ:

Q I show you a document marked Petitioners, for identification, No. 2, Mrs. Cosimano, and ask you if you will identify that and tell the Court what it is?

A This is a letter that is finally released to the Collector of Customs, in this case, Washington, D. C. which gives us the
24 authority to withdraw the merchandise, either under a diplomatic courtesy for an embassy or a courtesy under public law 291, for international organizations. This form must be received by the Collector before the Collector of Customs will approve this one.

THE COURT: Who is the letter signed by?

THE WITNESS: There is usually just a stamp on it but it is from the Assistant Secretary of Treasury, the first one and the second one is from the Department of State. It is all one --

MR. SCHWARTZ: If the Court please, I would like to have these documents, which I will hand the reporter, marked petitioners, for identification, 3, 4, and 5.

(Petitioner's Exhibits 3, 4, and
5 were marked for identification).

MR. SCHWARTZ: If the Court please, with respect to the documents about which I am going to question the witness, at this time, I will offer them only as to form. We were unable to get some that had not been filled in, but I will offer them at the proper time, as to the form of the document, only. I want to make that statement to the Court before I question the witness about it.

THE COURT: All right.

BY MR. SCHWARTZ:

Q I show you documents which have been marked
25 petitioners, for identification, -- I will need to have another
one marked. I inadvertently didn't hand the reporter this one.

(Petitioner's Exhibit No. 6
was marked for identification).

BY MR. SCHWARTZ:

Q Mrs. Cosimano, I hand you documents having been
marked Petitioners, for identification, 3, 4, 5, and 6, and ask you if you
will state to the Court what those documents are.

A No. 3 is a transportation entry filed at the port of arrival. It allows the merchandise to move in bond to the port of entry.

Q That is when the goods are coming in?

MR. McCALLY: Is that a permit?

THE WITNESS: One part of this is used as a permit. This is filed in at least 7 copies with the customs officer.

No. 4 is the warehouse or rewarehouse entry. This is filed at the final port of destination.

MR. SCHWARTZ: In this case it would be what port?

THE WITNESS: Washington, D. C.

No. 5 is the proprietor's warehouse bond. This is a guarantee to customs for any loss that may occur in the handling of bonded merchandise.

MR. SCHWARTZ: Is that in transit?

26 THE WITNESS: No, sir. This is once it is in the warehouse.

No. 6 is the general term bond for entry of merchandise and this bond covers the entry of the merchandise, it guarantees the payment of duties and taxes should there be an error on entry in the computation.

If by default the wholesaler cannot pay it, the bonding company will have to.

BY MR. SCHWARTZ:

Q When you say, it, you refer to what -- cannot pay "it".

A A penalty by customs, either for an overage, in most cases.

Q Now, with regard to the withdrawal of the merchandise, have you completed the procedure, that is, the withdrawal of merchandise for sale to an embassy?

A Not from the time that the documents have been lodged at customs, I haven't.

Q Will you please proceed, from the time the documents are lodged at customs?

A The documents are lodged in customs in the case of an embassy withdrawal and this is strictly a State Department authorization. The withdrawal is numbered and approved by the warehouse entry officer. He then issues a pink permit which is part of that receipt to the warehouse officer.

27 Q Is that part of the receipt which has been marked Petitioners' for identification, No. 1?

A Yes, that is petitioners, for identification No. 1. It is this pink permit, and it is signed by the collector or the Acting Officer on the lower left corner and this is the authority to the warehousemen to withdraw the merchandise free of duty.

THE COURT: Now, when you say warehouseman, you mean the Federal?

THE WITNESS: The Federal.

THE COURT: To allow what?

THE WITNESS: The wholesaler to remove that case from the bonded area and issue it to the embassy, because the merchandise has been released in the embassy's name and the courtesy is given to the wholesaler to make sure they get that case.

THE COURT: What assurance, or what procedures assure that the embassy -- what procedure is adopted to assure the embassy gets the liquor?

THE WITNESS: I can only answer that on previous experience, not with international, though, another wholesaler.

As soon as the merchandise is withdrawn from bond, there has been prepared --

28 MR. McCALLY: I am going to object to her testifying about her experience with other companies. I think her testimony should be limited to what happened in this particular case.

THE COURT: She is testifying about a particular procedure, a particular case.

MR. McCALLY: Which may not be the case in this particular case in question.

THE COURT: She is only using this as to what is typically done under these procedures.

MR. McCALLY: I agree she can testify to that, but I don't think that is of any value in this particular case since we are testifying as to two particular months, January and February, and what they usually do wouldn't have anything to do with this case at all.

THE COURT: I am going to overrule it and let her testify as to -- to see what is purely the practice, and, of course, perhaps the wholesaler himself, the witness can tie it into the procedure. Let her testify as to what the practice is.

THE WITNESS: Well, usually the wholesaler knows that the merchandise is to be withdrawn and prepares an invoice. That invoice is in the warehouse of the wholesaler at the time that the customs warehouse officer appears. The warehouseman, that is, the customs warehouseman, 29 opens the bonded area and removes only those cases which have been specified on the pink permit of the withdrawal entries. The bonded area is then closed, again, and the officer leaves. Using the invoice for the merchandise, also as a delivery ticket and receipt, the merchandise is sent to the embassy and is signed for and, I don't know which copy is used in this case. The one I know of, the original was signed by the receiving officer of the embassy to protect the wholesaler that the goods was actually received at the embassy and in order.

MR. SCHWARTZ: When you refer to a receipt, is that receipt a part of the set of the petitioner's, for identification, No. 1?

THE WITNESS: Not the receipt of the embassy.

MR. SCHWARTZ: Is this an official United States Government form of receipt for that?

THE WITNESS: The only form the Government has is the pink permit and that is signed by the actual receiver of the goods for the embassy, which, in all cases, I would say, would be the bonded warehouse receipt.

THE COURT: All you are concerned with is getting it out of customs?

THE WITNESS: Yes, and seeing that all of the --

THE COURT: -- duty and taxes and so forth are paid?

THE WITNESS: All of the regulations are complied with as far as the Federal Government is concerned.

30

BY MR. SCHWARTZ:

Q Can the bonded goods of any other wholesaler go into international's bonded warehouse?

A Only on a sale. Only when there is a sale, a transferee.

Q By that do you mean goods sold by international to another wholesaler?

A That is right.

Q My question is whether or not goods consigned, originally to any other wholesaler, other than international, can go into international's bonded warehouse?

A No.

Q They cannot?

A No.

Q Now, can any goods go in that is not imported into their bonded warehouse?

A No.

* * *

31 MR. SCHWARTZ: If the Court please, I have no further questions of this witness, and I offer in evidence, Petitioner's Exhibits, for identification, 1 through 6.

THE COURT: Suppose you look at them, Mr. McCally. I am going to suspend for 5 minutes to rest the stenographer and if you want to look at them during that time, it would probably be more convenient for you to do it that way, and then you can cross examine the witness afterwards.

(At this point a brief recess was taken).

THE COURT: Now, Mr. McCally, before we had a recess, certain documents were offered. Have you any objection?

MR. McCALLY: Yes, your Honor, I do. I would like to ask her a few preliminary questions, first, your Honor.

CROSS EXAMINATION

* * *

34 MR. McCALLY: To save time, if Mr. Schwartz would show me the papers, now, I might have no objection to them.

Your Honor, I will withdraw my objection to these exhibits. I would like to say that I understand that the forms here, which are for the general bond and for the warehouse, with entries, everything except Petitioner's Exhibit No. 1 -- I want to reserve the right to argue there, the merits of these things, if I see fit. I am only giving my consent to their admission into evidence, so, as far as the form itself is concerned,

not that these things were actually filed. I understand that the actual bond is in the custody of the United States Government, and, of course, would be impossible to get. I, at this point, don't see that it is going to have anything to do with the case, but if it does, I want to reserve the right to
35 argue the pros and cons of the bond, if that does become an issue. I don't think it will but I don't want to put Mr. Schwartz to the trouble of trying to get that bond, which, I understand, is rather hard to get.

THE COURT: I understand you don't have any objection to the bond. That will be received as Petitioners Exhibit No. 1.

MR. SCHWARTZ: I think Counsel had in mind, 1 through 6.

MR. McCALLY: What he says he has is actually only No. 1. The rest he does not have.

MR. SCHWARTZ: May I be heard.

THE COURT: I know it is my fault but I am confused.

MR. SCHWARTZ: I am offering Petitioner's, for identification, 1 through 6, to which Mr. McCally objected, and I now understand he has withdrawn his objection.

MR. McCALLY: That is correct.

(Petitioners Exhibits 1 through 6,
previously marked for identification,
were received in evidence).

MR. SCHWARTZ: Now, if the Court please, having, through inadvertence neglected to ask the witness on direct examination, with regard to the documents I now hold in my hand, I would ask that they be marked Petitioners, for identification, 7, 8 and 9 -- no, 7 has already been marked -- 8 and 9.

36

(Petitioner's Exhibits 8 and 9
were marked for identification).

REDIRECT EXAMINATION

BY MR. SCHWARTZ:

Q Mrs. Cosimano, I hand you documents which have been stapled together and have been marked Petitioners, for identification, 7, 8, and 9, and ask you if you will, please, examine them and tell us what they are.

A These are copies of official withdrawals made through the months of December, January and February.

* * *

MR. SCHWARTZ: Tell us what they are please.

* * *

37 **THE WITNESS:** These are official copies of the withdrawals filed during the months of December, January and February.

MR. SCHWARTZ: When you say, official copies, what do you mean by that?

THE WITNESS: They are exact copies of the withdrawals filed with the customs on the dates mentioned in the upper right corner.

* * *

MR. SCHWARTZ: What are the rubber stamped numbers on these documents?

THE WITNESS: It is a number assigned to keep track of the withdrawals for customs purposes.

MR. SCHWARTZ: Who assigns that?

THE WITNESS: Customs give us a series of numbers. Each broker is issued a series of numbers they are to use and they must be used in numerical order.

MR. SCHWARTZ: Do these have to do with the International Distributing Corporation?

38 **THE WITNESS:** Yes, they do.

* * *

MR. McCALLY: Your Honor, at this time I would like to renew my objection to Mrs. Cosimano's testimony insofar as it relates to generalities and does not relate to the months involved in this case, namely December of 1961 and February of 1962, and ask that the Court strike her testimony.

THE COURT: I am going to overrule your objection.

RECROSS EXAMINATION

BY MR. McCALLY:

Q During December of 1961, Mrs. Cosimano, did you personally handle all of the transactions involving this customs bonded warehouse in International Distributing Corporation?

A I am not sure that I handled all of them. There would be others involved.

Q Others you mean, in your company or other companies?

A And there is the possibility another company has handled part of them.

THE COURT: You mean broker?

THE WITNESS: Another broker.

THE COURT: As far as you know -- you say possibility.

39 What do you mean by possibility?

THE WITNESS: Some, not all of the shipments handled by International, are channeled through our office. Should I clarify that a little more?

THE COURT: Yes.

THE WITNESS: All of these withdrawals that were put in as exhibits were handled by us. There have been no other withdrawals made by another broker.

BY MR. McCALLY:

Q You are saying, in effect, that you did handle all of them for --

A All of the withdrawals for embassy personnel were handled through our office.

Q All right. Now, is the same true for February of 1962?

A Yes, it is.

Q Now, you stated, I believe, that these are exact copies?

A Yes.

Q How do you know they are exact copies?

A The sets aren't split until they are actually ready for filing with customs and then, at that point, the copy that was entered for exhibit, that one copy is removed. The balance of the set is filed with customs.

Q Who removes that copy?

40 A We do.

Q Did you, during that time, do that, or supervise, or --

A Either I or my husband did so.

Q You also testified about this pink permit, or receipt that was signed by the warehouseman, I believe?

A Yes.

Q What does he actually do? Does he sign that receipt and what does that mean, when he signs that receipt?

A Who?

Q The warehouseman, after this liquor is withdrawn from the custom bonded warehouse?

A He is authorized to receive the merchandise for the embassy.

Q Who authorizes him to do that?

A Customs do.

Q And so, he, in effect, is saying that this amount of liquor is now in my possession. Is that correct?

A Yes.

Q And control?

A To an extent.

Q To what extent?

A That if it isn't delivered to the embassy, duty and taxes is assessable, immediately. It can't be diverted.

41 Q Do you know what would happen -- lets go back to an individual case where Mr. Ades testified, two cases taken out to be delivered to the Russian embassy -- did you hear that testimony?

A Yes, sir.

Q Suppose on the way to the Russian embassy, in some manner or other, these were destroyed by accident or collusion. Is the Russian embassy, at that point, responsible to pay for those goods?

MR. SCHWARTZ: I object to that as calling for a legal conclusion on the part of the witness.

THE COURT: I will overrule the objection. He wants to know what would happen if somebody stole the liquor.

THE WITNESS: If there is evidence it wasn't entirely destroyed --

MR. McCALLY: Lets assume it is, first.

THE WITNESS: Entirely destroyed?

MR. McCALLY: Yes.

THE WITNESS: So long as evidence is submitted to customs it was destroyed, duty and tax will not be assessed.

MR. McCALLY: Lets assume that is no such evidence, there is a possibility it was not destroyed?

THE WITNESS: Then, duty and tax would have to be paid.

42 MR. McCALLY: By whom?

THE WITNESS: That, I wouldn't know. I would assume that since it was the property --

MR. SCHWARTZ: I object.

THE COURT: Don't assume anything, if you don't know.

MR. McCALLY: Have you ever had such a case?

THE WITNESS: No, sir.

MR. McCALLY: Can you tell us how the liquor is actually delivered, once it is removed from the custom bonded warehouse?

THE COURT: What you do mean, liquor delivered?

MR. McCALLY: Physically.

THE COURT: Do you mean whether in a wagon or --

MR. McCALLY: The procedure, if she knows. In other words, it is taken out of this warehouse. I assume it is put on a truck and sent to the embassy. Who usually does that, the embassy? Does the truck belong to the International Distributing Corporation?

THE WITNESS: It depends. Sometimes the embassy picks it up at the warehouse. Sometimes it is delivered by the warehouseman himself. In other cases, it may be a common carrier. It depends on the circumstances and the timing.

BY MR. McCALLY:

Q Is there any other means of control, other than this
43 warehouse receipt which is signed when the cases are withdrawn
from the warehouse?

A If there is a transaction at suspect, if the customs agents are involved, they will want to make sure that the person that signed it is actually the party that should have received it. In other words, if there is a transaction that was subject to question as to whether it had gone to the correct party, the one that was entitled to the merchandise, the wholesaler would have to submit to the customs agent, a receipt showing that he did deliver it. Otherwise, he would be subject to the duty and tax.

Q During these two months we are talking about, did that, in fact, ever happen, do you know?

A Not that I know of.

THE COURT: I notice on the bill, that is attached to the petition, and I take it they are correct bills, you have no -- don't you have the bills attached to the petition 1, for the month of December and one for the month of February? You have them, don't you?

MR. McCALLY: Yes, your Honor.

THE COURT: Are they correct?

MR. McCALLY: As far as I know.

THE COURT: On that, it says, on the month of December, it says, the above, in which you assessed a tax of \$848.45, you have the
44 above gallonage, will be claimed as a deduction on Schedule d. It represents sales made to embassies and legations. Is there any question this tax is assessed on liquor sold to embassies and legations. It is, isn't it?

MR. McCALLY: Yes, your Honor.

THE COURT: The way your question was, I thought there might be a question as to whether or not that is correct or not.

MR. McCALLY: What I was trying to do is show the amount of control. I don't know what happens. I just wanted to find out if there had been any cases involved in this type of thing. I didn't mean to indicate there were.

THE COURT: All right.

MR. McCALLY: I have no further questions, your Honor.

MR. SCHWARTZ: If the Court please, I offer in evidence, Petitioner's, for identification, 7, 8, and 9.

THE COURT: Mr. McCally, do you object?

MR. McCALLY: No, sir.

THE COURT: That will be received in evidence.

(Petitioner's Exhibits 7, 8 and 9
previously marked for identification,
were received in evidence).

Whereupon,

MAYME BOLLINGER

45

was called as a witness, * * *

47

WALTER C. THOMPSON

was called as a witness, and being first duly sworn, was examined and testified as follows:

* * *

DIRECT EXAMINATION

* * *

Q What is your business?

A I am supervisor of the Sale, Use, and Excise Tax section.

Q Of the District of Columbia?

A Of the District of Columbia.

Q I ask you to look at documents which I will ask to be marked 10 and 11 for identification, and tell us please what these are.

(Petitioner's Exhibits 10 and 11
were marked for identification)

A Exhibit No. 10 is a wholesaler's alcoholic beverage tax return for the month of December 1961.

Q By what company?

A Filed by the International Distributing Corporation of 3035 V Street, N. E., Washington, D. C.

Q And I ask you to tell us, please, what Exhibit 11 is?

A Exhibit No. 11 is the wholesaler's alcoholic beverage tax return for the month of February, -- this is marked 1961 but I think it is a typographical error, sir, it is 1962, filed by the --

THE COURT: Aren't these admitted by the District?

MR. SCHWARTZ: Yes, but I wanted to ask Mr. Thompson some questions with regard to them.

THE COURT: All right.

THE WITNESS: Filed by the International Distributing Corporation at 3035 V Street, N. E., Washington, D. C.

BY MR. SCHWARTZ:

Q Was there any action taken by your Bureau or Department with regard to either or both of those taxes?

A Well, with respect to the December 1961 return, as I recall, we disallowed a deduction taken on Schedule D, after we had written the company and asked them to identify what particular deductions were indicated on the schedule, but were not identified in the explanation of deductions, and manner of disposition required to be indicated in column 2.

Q Did they identify them?

A They submitted to us a letter in reply identifying those deductions as sales to embassies and legations.

* * *

50 MR. SCHWARTZ: In Petitioner's, for identification, No. 11 I call your attention to Schedule B and ask you to tell me what that is, please.

THE COURT: Can't I read it?

51 MR. SCHWARTZ: I am sure your Honor can, but I want to ask whether or not his Bureau levies a tax on shipments of liquors having their destination out side of the District of Columbia.

THE COURT: Isn't that by regulation?

MR. SCHWARTZ: I don't think so, sir.

THE COURT: Isn't it by regulation, Mr. McCally?

MR. McCALLY: I don't know exactly.

THE COURT: You want to -- all right, ask him the question.

MR. McCALLY: I would like to have him repeat the question.

THE COURT: He wants to know whehter any tax is assessed by the District on the sale of liquor which has its destination outside of the District of Columbia.

MR. McCALLY: I object to the question. It is not an issue here today.

THE COURT: It is an issue to this extent. I don't know how far he has to have the evidence to develop his point. He says there is a discrimination because the liquor that goes out of the District is not taxable. I don't know whether his theory is correct, but I don't think any harm can be done.

MR. McCALLY: I still object, your Honor.

THE COURT: I overrule the objection.

52 THE WITNESS: Schedule B is a schedule entitled, "shipments out of the District of Columbia".

MR. McCALLY: I object to his reading what the schedule is.

THE COURT: He merely asked you -- what we are concerned with is whether or not you assessed the tax on liquor of which a destination is without the District of Columbia -- what you do down there?

THE WITNESS: We do not assess the tax where there is a provision under either the law or the regulations which permits it to be shipped out of the District tax free.

THE COURT: Do you have regulations of that?

THE WITNESS: We have law and regulations that cover that, yes, sir.

THE COURT: He wants to know what the practice is.

THE WITNESS: We have a provision under the laws of the legations to be permitted to be shipped out of the District tax free.

THE COURT: Lets suppose, now. Lets take a case where someone buys liquor in the District and it is to be delivered outside of the District. You don't assess the tax, do you?

THE WITNESS: We do in some cases and we don't in others.

THE COURT: In what cases don't you assess?

53 THE WITNESS: Where it is a delivery to a licensee out of the District or a delivery to the United States Government.

THE COURT: Outside of the District.

THE WITNESS: Outside of the District.

MR. SCHWARTZ: You do not levy the tax?

THE WITNESS: That is correct.

MR. SCHWARTZ: Now, do you levy a tax on liquors sent into the embassies in the District of Columbia by Maryland wholesalers?

MR. McCALLY: Objection, your Honor.

THE COURT: What ground?

MR. McCALLY: I don't think that is an issue. The only thing we are concerned with here, today, is the tax that is levied upon

embassies and other organizations, by Federal Public Law, not what is done by outside distributors. I don't think that is an issue here today.

THE COURT: I am going to reserve on this. His point is a discrimination, I suppose, an unconstitutional discrimination, which raises an interesting point. Whether or not I can determine the constitution correctly, I doubt seriously if I can. I think you have -- you are entitled to raise the point. This may go to the Court of Appeals and if you don't raise it here, they might say you have waived it so I think this is an issue he has raised and it is discriminatory. I will overrule
54
the objection and let him testify. Do you tax where the goods are sold in the embassy by a wholesaler outside of the District?

THE WITNESS: If I recall the proper section of the Act, section 39 (a) --

THE COURT: Do you?

THE WITNESS: No, sir, we do not, under that section.

MR. SCHWARTZ: Now, do you levy a tax on liquors sold by a District of Columbia wholesaler to a military installation in the District of Columbia?

MR. McCALLY: Objection, again, your Honor, same reason.

THE COURT: I will overrule the objection.

THE WITNESS: We do not.

MR. McCALLY: I assume you mean a United States Military Installation?

MR. SCHWARTZ: Yes, sir, I do.

55

CROSS EXAMINATION .

BY MR. McCALLY:

Q Mr. Thompson, I want to redirect your attention to the first of Mr. Schwartz's questions about wholesalers who sell to people outside of the District. You stated, I believe, we do not tax them?

A I stated we do not tax them if we have a provision in the law or regulations which --

Q I want you to testify, specifically, why we do not tax them in that particular case.

56 A Because we have a specific regulation in the law or Act not to tax them.

Q Act --

A Act or regulations.

Q What about to military installations within the District?

A Within the District?

Q Yes.

A We do not tax them.

Q For what reason?

A We have a Corporation Counsel's opinion and under that opinion, sales to the United States Government, the District Government or instrumentalities of either are exempt from the tax.

MR. McCALLY: I have no further questions.

MR. SCHWARTZ: I have no further questions.

THE COURT: All right. Thank you.

(witness excused).

THE COURT: Lets move along.

Whereupon,

* * *

57 THE WITNESS: Harold T. Straughan, 9010 Walden Road,
Silver Spring, Maryland.

DIRECT EXAMINATION

BY MR. SCHWARTZ:

Q Will you state your full name?

A Harold T. Straughan.

Q What is your connection with the International
Distributing Corporation?

A Secretary and Treasurer.

Q I ask you whether or not during the months of December
of 1961 and February of 1962, any customs broker handled International
Distributing Corporation's business other than the Cosimano Company?

A Yes, sir.

Q Who?

A Samuel Shapiro & Company.

Q Now, I show you the Petitioner's Exhibits 7, 8, and 9 --

THE COURT: Excuse me. Don't forget now, when you finish with those, the exhibits should go in the record. Don't lose them.

MR. SCHWARTZ: No, I won't. Well, at the conclusion, of course, in order to comply with Federal regulations, I have to file a motion to withdraw, at the appropriate time.

MR. SCHWARTZ: I ask you to look at Petitioner's
58 Exhibits 7, 8, and 9, and tell me whether or not any customs broker, other than the Cosimano Company, has handled those withdrawals?

THE WITNESS: No, sir.

MR. SCHWARTZ: Now, if the Court please, with regard to the delivery to embassies, is Mr. McCally's position they were not delivered to the embassies?

THE COURT: No, he hasn't taken that position.

MR. SCHWARTZ: Very well. No questions.

CROSS EXAMINATION

BY MR. McCALLY

Q I noticed when he handed you exhibits 7, 8, and 9, and asked you whether or not any company, other than the Cosimano Company

handled the invoices, or whatever you want to choose to call them, in 7, 8, and 9, you only looked through 1 or 2 pages. Are you certain they are all handled by them?

A Yes, I give out the embassy business myself.

Q Did you look through the entire stack to see if they are all there?

A Yes, sir.

Q Mr. Straughan, I want to direct your attention to the time when the two cases of scotch were removed for delivery to the Russian embassy, have been taken out of the custom bonded warehouse.

59 THE COURT: This is a typical case.

BY MR. McCALLY:

Q The case Mr. Aches had referred to, just an example. I assume it is just a typical case. At that point, a warehouse receipt is signed. Is that correct?

A Yes, sir.

Q And who signs that receipt?

A The custom broker.

Q At that point, are you familiar with the manner in which delivery is made to the embassy?

A Yes, sir.

Q How is that generally accomplished?

A Well, it is taken directly out of the bond and invoices made on it and shipped direct to the embassy.

Q By whom?

A By my employees.

Q All right, sir. Now, I want you to assume this shipment is in some manner totally destroyed. At that point, would the Russian embassy still be responsible for paying International Distributing Corporation for this two cases of scotch?

A No, sir, I would say not.

Q Have you ever had such a case?

A No, sir.

Q Have you ever had such a case where it has been
60 partially destroyed?

A No sir.

Q And for the two years involved here, as far as you know, all of the liquor that has been withdrawn and delivered to embassies, has, in fact, reached its destination, as far as you know?

A Yes, sir.

MR. McCALLY: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. SCHWARTZ:

Q Has your firm been paid by the embassy's representative,

as in 7, 8, and 9?

A Yes, sir.

Q That is all I have.

THE COURT: Thank you Mr. Witness.

(witness excused).

THE COURT: Any further witnesses?

MR. SCHWARTZ: No. That is our case. If the Court please, we offer the returns, which I understand, are admitted. We offer 10 and 11.

MR. McCALLY: I have seen them and I have no objection. If we could, we would like to withdraw these and photostat them so the originals will not be in evidence.

THE COURT: Let me say this. Don't the bills that are attached to the back of the petition serve your purpose?

* * *

34

AMERICAN OVERSEAS PACKING, INC.
100 EAST 42ND STREET
NEW YORK 17, N.Y.
EST. 1918

G. COSIMANO #

Respondent's (petitioner below)
Exhibit No. 1 (a)

DUTY PAID

Custom Form 755
TREASURY DEPARTMENT
S-40 C.M. S.E. H.M. H.A. H.L.
H.S. C.R.
March 1955

WAREHOUSE WITHDRAWAL FOR CONSUMPTION

This Space for Customs Use Only		BUREAU OF CUSTOMS		This Space for Customs Use Only	
BLOCK AND FILE NO.				WITHDRAWAL NO. AND DATE	
Port of Entry Name		Dist. and Post Code		Wash. Seal No. and Date	
Washington, D.C.		13 - 05			
Reporting Fiscal Officer or Clerk				Date of Importation	
Merchandise Returned By					

MARKS & NUMBERS OF PACKAGES COUNTRY OF ORIGIN OF MERCHANDISE	DESCRIPTION OF MERCHANDISE IN TERMS OF U.S.D. ANNO. NO. AND KIND OF PACKAGES NET QUANTITY IN U.S. LIQ. ANNO. UNITS	ENTERED VALUE IN U.S. DOLLARS	U.S.D. ANNO REPORTING NO.	TARIFF OR I.R.C. RATE	DUTY AND L.R. TAX	
					Dollars	Cents
ADD.	() cases					
4/5 Qt.						
	Gals.		000	Free	Free	
	Bottles Lbs.		0217.0000 0010.1000	Free	Free	
	Free of all duty and tax under: State Dept. letter :: Public Law 271					
Drawn						
Withdrawn						
Released						
Warehouse						
Withdrawn Embassy of						
For:						
Withdrawn hereby authorized to withdraw the above-described merchandise						
Signature Date						

Three copies are required for use as part of withdrawal. Two for the collector and one as a detached copy

34

ADDRESS BUSINESS FORMS, INC.
100 EAST 60TH STREET
NEW YORK 22, N.Y.
MADE IN U.S.A.

G. COSIMANO #

Respondent's (petitioner below) Exhibit No. 1 (b)

Customs Form 700-A
TREASURY DEPARTMENT
REV. 10-12-58, C.M. 1-2-59,
21.9, C.R.
March 1961

DUTY PAID

Form approved
Budget Control No. 40-5220-1

WAREHOUSE WITHDRAWAL FOR CONSUMPTION

PERMIT		BUREAU OF CUSTOMS		The Permit for Withdrawal Form Only	
				WITHDRAWAL NO. AND DATE	
Port of Entry Name		Dist. and Port Code		When Sent No. and Date	
Washington, D.C.		13 - 05			
Importing Vessel (Name) or Carrier				Date of Importation	
Merchandise Entered By					

MARKS & NUMBERS OF PACKAGES COUNTRY OF ORIGIN OF MERCHANDISE (1)	DESCRIPTION OF MERCHANDISE IN TERMS OF U.S.I.D. AND NO. AND KIND OF PACKAGES (2)		NET QUANTITY IN U.S. I.D. AND NO. UNITS (3)	Remarks
ADD.		() cases		
4/5 Qt.				
		Gals.		
	Bottles	Lbs.		
	Free of all duty and tax under: State Dept. letter # Public Law 271			

Do not make an entry here

<p>TO THE WAREHOUSE OFFICER</p> <p>W. J. Jones</p> <p>Withdrawing Embassy of Peru</p> <p>(See section on this form)</p> <p>You are authorized to release the above-described merchandise to</p> <p>Acting Deputy Collector</p>	<p>TO THE COLLECTOR</p> <p>Show and Date Permit Received Date Entered on Record</p> <p>Date Goods Released Date Permit Returned</p> <p>Goods released in response to order, unless a license is issued</p> <p>Warehouse Officer</p> <p>Warehouse Proprietor</p>
--	---

Respondent's (petitioner below) Exhibit No. 2 (a)

The Collector of Customs

Sir:

You are hereby authorized to comply with the request contained in a letter from the Department of State dated , copy attached, in accordance with the authority indicated in sub-paragraph below:

- (1) 10.29(a)(1) of the Customs Regulations.
- (2) 10.29(a)(2) of the Customs Regulations.
- (3) 10.29(d) of the Customs Regulations.
- (4) 10.30(c)(1) of the Customs Regulations.
- (5) 10.30(c)(1) of the Customs Regulations, provided no duty or tax has been paid and authority to make withdrawal is transferred to the privileged individual or his representative.
- (6) 10.30(c)(2) of the Customs Regulations.
- (7) 10.30(c)(2) of the Customs Regulations and Sec. 7511, Internal Revenue Code, or applicable treaty provisions.
- (8) 10.30(c)(2) of the Customs Regulations and Sec. 7511, Internal Revenue Code, or applicable treaty provisions, provided no duty or tax has been paid and authority to make withdrawal is transferred to the privileged individual or his representative.
- (9) 10.30a(b) of the Customs Regulations.
- (10) 10.30b of the Customs Regulations.
- (11) As an act of international courtesy.

Very truly yours,

Assistant Secretary of the Treasury

By:

Respondent's (petitioner below)
Exhibit No. 2 (b)

DEPARTMENT OF STATE
WASHINGTON

In reply refer to
S/S-PR

The Secretary of State requests the Secretary of the Treasury to authorize the appropriate customs officer to admit the following shipment free of duty and internal revenue tax, if any, in accordance with a request made to the Department of State as indicated below:

From:

Dated:

Port:

Consignment and customs identification:

Consigned or addressed to:

Property of:

Name of Carrier:

Specific purpose for which imported:

CHIEF, FBI
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C.

Form Approved
 OMB No. 0704-0188

SUMMARY OF FINDINGS

Name _____
Room _____
Date _____

Entry No. _____
Class of Entry _____
(U.S. MAR. T. (M. R.) (T. E.) (Growth, etc.)

Date _____ Post _____ Post U. S. Post
No. _____ Cost No. _____ or Unpaid _____

Page of _____ Date _____

Entered or imported by _____ to be shipped _____

to have the _____ assigned to

Collector of customs at _____ Final foreign destination _____
(C. H. L. number) (Place or country) (City number and initial) (Port or station)
(No connections only)

Foreign port of loading _____ B/L No. _____ Date of sailing _____

Indicated on the _____ Flag _____ on _____ via _____
(If not known, mark)

Expected from _____ on _____ Goods now at _____

 (Country) (City) Name of warehouse, station, post, etc.)

[illegible]

603

COMPONENT OF LOSS FOR TRANSPORTATION IS (ONE
AND TWO LOSS FOR DESTRUCTION FOR

I truly declare that the statements contained herein are true and correct to the best of my knowledge and belief.

Entered or withdrawn by:

(Paw)
WITH THE EXCEPTIONS NOTED ABOVE, THE WITNESSES DESCRIBED COME
WENT.

Delivered to the Carrier named above, for delivery to the Collector of Customs at destination sealed with Customs seal Nos. _____
or the packages (were) (were not) labeled, or sealed and sealed.

Labels on the right:

770001, **Abstracts**, **as available**,

Abstract — *See page 100*

as verified by expert records

(Continued on opposite page)

1000

1992

(Date)

To the Inspector or Warehouse Officer: The above-described goods shall be disposed of as specified herein.

For the Collector

Receives from the collector of customs of above district the merchandise described in this manifest for transportation and delivery into the custody of the customs officers at the port named above, all packages in accordance with order except as noted herein.

Attorneys at Law of Counsel

BEST COPY

1999

Respondent's (petitioner below)
Exhibit No. 3 (b)

INSTRUCTIONS

Consult customs officer or Part 18, Customs Regulations, for the appropriate number of copies required for entry, withdrawal, or manifest purposes.

For the purpose of transfer under the customs or lighthouse provisions of a proper bond to the place of shipment from the port of entry, entry copies bearing a stamp or notation as to their intended use may be required for local administration.

As the form is the same whether used as an entry or withdrawal or manifest, all copies may be prepared at the same time by custom houses, unless more than one vessel or vehicle is used, in which case a separate set of manifests must be prepared for each such vessel or vehicle.

Whenever this form is used as an entry or withdrawal, care should be taken that the kind of entry is plainly shown in the blank in the upper right-hand corner of the face of the entry.

RECORD OF CARGO OR LIGHTHOUSE

Delivered to Customs or Lightman in apparent good condition except as noted on this form

CONVEYANCE	QUANTITY	DATE	DELIVERED	RECEIVED	RECEIVED
			(Inspector or Warehouse Officer)	(Customs or Lightman)	(Date) (Inspector)
			(Inspector or Warehouse Officer)	(Customs or Lightman)	(Date) (Inspector)
			(Inspector or Warehouse Officer)	(Customs or Lightman)	(Date) (Inspector)
			(Inspector or Warehouse Officer)	(Customs or Lightman)	(Date) (Inspector)
Total			(Warehouse proprietor)		

CERTIFICATE OF TRANSFER. (If required)

I certify that within-described goods were transferred by reason of _____ to _____ on _____, 19____, at _____ and sealed with _____ or seals Nos. _____, and that goods were in same apparent condition as noted on original lading receipt.

I certify that within-described goods were transferred by reason of _____ to _____ on _____, 19____, at _____ and sealed with _____ or seals Nos. _____, and that goods were in same apparent condition as noted on original lading receipt.

DEFECTED

at _____
on _____, 19____
and seals found _____

Inspector, Collector, or Master.

Inspector, Collector, or Master.

If transfer occurs within city limits of a customs port or station, customs officers must be notified to supervise transfer

INSPECTOR'S REPORT OF RESEARCH AT INSURANCE

Port _____ Station _____ 19____

To THE COLLECTOR OF CUSTOMS: Delivering line _____ Car No. _____ Initial _____
Arrived _____, 19____ Condition of car _____ of seals _____ of packages _____

Date of Delivery to Inspectors, or Car, Order	PERMAN	No. and Kind of Entry on Customs Order	Receipt Taken on Lading No.	Customs, Inc.

I certify above report is correct.

Inspector.

COLLECTOR'S COPY ☐
STATISTICAL COPY ☐

Custom Form 702
TREASURY DEPARTMENT
8-10, 8-10, 10-10, 10-11, 10-11, C.R.
July 1960

BUREAU OF CUSTOMS

This Space For Customs Use Only		BUREAU OF CUSTOMS		This Space For Customs Use Only	
BLOCK AND FILE NO.		M.O.T.		ENTRY NO. AND DATE	
		MANIFEST NO.			
FOREIGN PORT OF LADING		U.S. PORT OF LADING		Dist. and Port Code	
				Port of Entry Name	
				Tonnage Bond No.	
Importer of Record (Name and Address)					
For Account of (Name and Address)					
Importing Vessel (Name) or Carrier		B.L. or A.W.B. No.		Port of Lading	
Country of Exportation		Date of Exportation		IT No. and Date	
U.S. Port of Unloading		Date of Importation		IT From (Port)	
				IT To (Port)	
Description of Merchandise in Terms of U.S.D. Anno, Number and Kind of Packages		Entered Value in U.S. Dollars		U.S.D. Anno Reporting No.	
Gross Weight in Pounds		Net Quantity in U.S. D. Anno Units		Tariff or IRC Rate	
				Duty and IR Tax	
				Dollars	
				Cents	
Washington					
Missing Documents		This Space For Customs Use Only			

I declare that I am the ☐ actual owner and that the actual owner for certain purposes is as shown above, or ☐ owner or agent of the owner.
I further declare that the certification ☐ was or ☐ was not obtained as per

means of a purchase or agreement to purchase. I also include in my declaration all the agreements in the declaration on the basis of the entry

DATE _____
(Signature) _____
(Address) _____

Respondent's (petitioner below)
Exhibit No. 4 (b)

DECLARATION OF NOMINAL CONSIGNEE, CONSIGNEE, OR AGENT OF CONSIGNEE

To the best of my knowledge and belief, all statements appearing in this entry and in the invoice or invoices and other documents presented herewith and in accordance with which the entry is made, are true and correct in every respect, the entry and invoices set forth the true prices, values, quantities, and all information as required by the laws and the regulations made in pursuance thereof, the invoices and other documents are in the same state as when received, I have not received and do not have of any other invoice, paper, letter, document, or information showing a different currency price, value, quantity, or description of the said merchandise, and if at any time hereafter I discover any

information showing a different state of facts I will immediately make the same known to the Collector of Customs at the port of entry.

If the merchandise is entered by means of a seller's or shipper's invoice, no customs invoice for any of the merchandise covered by the said seller's or shipper's invoice can be produced due to causes beyond my control. If the merchandise is entered by means of a statement of the value or the price paid in the form of an invoice it is because neither seller's, shipper's, nor customs invoice can be produced at this time.

CARRIER'S CERTIFICATE AND RELEASE ORDER

Date

The undersigned carrier to whom or upon whose order the articles described herein or in the attached document must be released, hereby certifies that the consignee named in this document is the owner or consignee of such articles

within the purview of section 404(b) Tariff Act of 1930. In accordance with the provisions of section 404(j) Tariff Act of 1930, authority is hereby given to release the articles covered by the abovesubscribed statement to such consignee.

(Name of carrier)

(Agent)

AUTHORITY TO MAKE ENTRY FOR PORTION OF CONSOLIDATED SHIPMENT

The merchandise covered by this entry or such portion thereof as may be specifically indicated was shipped by

consigned to

returned to

covered by *

dated

at

on file with the collector of customs at

(City)

ultimate consignee, hereby authorizes

the consignee in the above mentioned document (naming merchandise for release) or order to make customs entry for the merchandise.

(Consignee)

(Transfer of the above authority may be made by endorsement here.)

* Invoice, Bill of lading, "Correlated duplicate bill of lading," Carrier's certificate, or Shipping receipt.

Notes

Form filed No.—If single entry bond is filed insert "S.B."

Importing vessel or carrier—Show the name of vessel or carrier and master power. If imported by plane or train show also flight or train number.

Type and Date of Invoice—If entry includes more than one invoice show number of invoices and include information for each invoice in the body of the form in columns provided for Description of Merchandise.

Duty and I.R. Tax—Show separately amount of duty, internal revenue tax, and or tea inspection fee on each item listed. Internal revenue tax assessment should be preceded by the letters "I.R." Tea inspection assessment should be preceded

by the letters "T.I." If the entry represents more than one detachable item, the amounts of duty, internal revenue tax, and tea inspection fee should be totaled and labeled separately: Total Duty, Total I.R. Tax, and or Total T.I. Fee. And recorded together with an aggregate total labeled Total Collections on the extreme lower portion of this column.

For information relative to the preparation and filing of a customs entry, see UNITED STATES CUSTOMS REGULATIONS and UNITED STATES DEPARTMENT OF COMMERCE DUTIES ANNOTATED FOR STATISTICAL REPORTING.

BROKER OR AGENT

(Name)

(Address)

This form may be printed by private parties provided it conforms to official form in size, wording, color, quality of paper, and arrangement. Not valid for use before U.S. Customs.

U.S. GOVERNMENT PRINTING OFFICE: 1934 O - 550-100

Custom Form 5000
TRANSMITTED OVER AIRMAIL
MAY 20, 1968, 11:11
JUNE 1968

BUREAU OF CUSTOMS

PROPRIETOR'S WAREHOUSE BOND
FOR STORAGE AND MANIPULATION OF MERCHANDISE, CLASSES 2, 3, 4, 5, AND 6
OF INSTRUCTIONS PRINTED ON BACK MUST BE OBSERVED

KNOW ALL MEN BY THESE PRESENTS That

_____ as principal,

and _____ of _____,
do hereby certify that the above named _____
as services, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of _____

_____ dollars (\$_____),
for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns,
jointly and severally, firmly by these presents.

Witness our hands and seals this _____ day of _____, 19____.

WHEREAS, under the warehouse laws of the United States and the regulations of the Treasury Department made in pursuance thereof, the above-bonded principal has made application to bond the warehouse, warehouses, or premises located in Customs Collection District No. _____, at the place and for the purposes specified below, namely:

[illegible]

(Continued on back)

* If the principal or guarantor is a corporation, the name of the State in which incorporated also shall be shown.

[illegible]

(1) If the above-bonded principal shall comply in all respects with the provisions and requirements of the warehousing laws and regulations of the Treasury Department relating thereto and with the provisions relating to the repair and security of the premises; and shall receive for storage only such merchandise as may be permitted by law and regulations to be deposited therein; and shall safely keep the same therein, all in accordance with the law and regulations relating to the warehousing of merchandise; and shall promptly report to the collector any and all damaged or perishable articles that may be found or stored in said warehouse, warehouses or premises (hereinafter called warehouse); and shall not permit any merchandise stored therein to be opened, repacked or manipulated in any manner except upon permit from the collector issued under law or regulations;

(3) And if the said principal shall not remove, nor suffer to be removed, any merchandise from said warehouse without lawful permit and without the presence of the customs officer in charge, or, in default thereof, shall pay to the collector on demand all duties, taxes, charges, and exactions that may be found to be due on the merchandise so removed, and in the event any merchandise, the duty on which cannot be established, is removed from said warehouse without proper permit, if the said principal shall pay to the said collector on demand as liquidated damages a sum not to exceed \$500 on each package so removed, it being expressly understood and agreed that the liability of said principal under this bond shall extend to all cases where merchandise is lost or stolen from said warehouse, whether the said loss or theft shall result from the fault of said principal or not;

Then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name)	(Address)	
(Phone)	(Address)	(Status)
(Phone)	(Address)	
(Phone)	(Address)	(Status)
(Phone)	(Address)	
(Phone)	(Address)	(Status)

Respondent's (petitioner below)
Exhibit No. 5 (c)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the "_____ secretary of the corporation named as principal in the within bond; that _____, who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

_____, [CORPORATE SEAL]
Note.—To be used when no power of attorney has been filed with the collector of customs.

*This is executed by the secretary, assistant secretary, or other officer of the corporation.

INSTRUCTIONS

1. The surety on this bond may be one corporation authorized by the Secretary of the Treasury to act as surety, or not less than two responsible individual sureties. Each individual surety shall justify in a sum not less than the amount of the bond and his sufficiency shall be shown by affidavit made on customs Form 3679.

2. A firm, as such, shall not be accepted as a surety, nor a partner for copartners or for a firm of which he is a member. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their stock holdings therein.

3. The name, including full Christian name, and residence of each individual party to the bond shall be inserted in the body thereof, and each such party shall sign the bond with his usual signature on the line opposite the scroll seal, and if executed in Maine or New Hampshire, an adhesive seal shall be affixed opposite the signature. The signature of each individual party to the bond shall be witnessed by two persons, who shall sign their names as witnesses, followed by their addresses.

4. If the bond is given by persons composing a partnership, the execution of such bond by any member thereof, or by any person holding a power of attorney (which power, or a certified copy thereof, shall be filed with the bond) authorizing him to execute the bond on behalf of such partnership, will bind the other partners in like manner and to the same extent as if such other partners had personally joined in the execution. Partnership bonds shall be executed in the firm name, with the name of the member or attorney of the firm executing same appearing immediately below the firm signature. The names of all persons composing the partnership shall appear in the body of the bond, as, for example, "A, B, and C, composing the firm of A, B, and Co."

5. If the principal or surety is a corporation, the name of the State in which incorporated shall be inserted in the appropriate place in the body of the bond; and the bond shall be executed in the corporate name, immediately followed by the signature of a person duly authorized to act in its behalf; and the bond shall be attested under the corporate seal. If the corporation has no corporate seal, the fact shall be stated, in which case a scroll or adhesive seal shall appear following the corporate name.

6. The official character and authority of the person or persons executing the bond for the principal, if a corporation, may be certified by the secretary, assistant secretary, or other officer of the corporation, according to the above form. This certificate need not be executed if a power of attorney has been filed with the collector evidencing the authority of the persons executing the bond on behalf of the principal.

7. A married woman shall not be accepted as surety. If an unmarried woman acts as surety, she shall include in her affidavit on customs Form 3679 a statement setting forth the fact that she is unmarried.

8. Bonds in which alterations and erasures occur shall have placed upon them a statement by an agent of the surety company, or by the individual sureties, thereon, that such alterations or erasures were made prior to the signing of the bond; or if such alterations or erasures were made after the bond was signed, the consent of all the parties thereto shall be written in the bond.

Respondent's (petitioner below)
Exhibit No. 5 (d)

CUSTOMS FORM 3441

District No.
Part of

**BOND OF PROPRIETOR OF STORAGE
AND MANIPULATION WAREHOUSE**
Respectfully referred to the Bureau of Customs for
appropriate action.

Collector of Customs
TREASURY DEPARTMENT
BUREAU OF CUSTOMS

(baw)
Respectfully referred to the Bureau of Armaments
(Barrel Branch Branch), for examination as to the
within corporate surety.

Head, Branches and Bonds.
BUREAU OF ACCOUNTS

(baw)
Examined and approved as to the within corporate
surety.

Commissioner.
TREASURY DEPARTMENT
BUREAU OF CUSTOMS

(baw)
Approved and returned.
By direction of the Commissioner:

Chief, Division of Classification
and Inspection.

Respondent's (petitioner below)
Exhibit No. 6 (a)

Customs Form 100
TREASURY DEPARTMENT
U. S. C. B.
March 1939

BUREAU OF CUSTOMS

GENERAL TERM BOND FOR ENTRY OF MERCHANDISE

KNOW ALL MEN BY THESE PRESENTS

That _____
of _____, as principal,
and _____ of _____
and _____ of _____
as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of _____
dollars (\$ _____), for the payment of which
we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by
these presents.

WITNESS our hands and seals this _____ day of _____, 19____

WHEREAS, the above-bonded principal expects to enter at the port(s) of _____

during the period of one year beginning on the _____ day of _____, 19____, and ending

on the _____ day of _____, 19____, both dates inclusive, certain imported
merchandise for consumption, warehouse, transportation, exportation, or for any other purposes as indicated in the respective entries
and as provided for by law and regulations; or intends to make withdrawal of such merchandise from warehouse or public stores
for any of the above-mentioned purposes; or intends to remove such merchandise or the products thereof as provided for by law and
regulations from parties to whom such merchandise or products are released or transferred under bond; and

WHEREAS, the above-bonded principal may request that the merchandise be examined elsewhere than at the public store,
wharf, or other place in charge of a customs officer; and

WHEREAS the said merchandise, in whole or in part, may be conditionally released prior to the production of certain documents
(other than bills of lading) and other evidence required by law and regulations, or prior to the ascertainment by customs officers of
the quantity and value thereof and of the full amount of duties, taxes, charges, and exacting due thereon, or prior to the decision by
the proper officers of the Government as to the right of said merchandise to admission into the United States, or may be released
under conditions and for purposes as provided for by law and regulations and as indicated in the respective entries; and

WHEREAS, pursuant to the regulations promulgated under section 448 (b), Tariff Act of 1930, applications may be filed for
special permits for the delivery of imported articles, the immediate delivery of which will be necessary prior to the entry thereof
and the payment of duties thereon;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT—

(1) If, in cases where the merchandise has been released prior to entry pursuant to section 448 (b) of the Tariff Act, the above-
bonded principal within the time prescribed in section 8.50, Customs Regulations of 1942, as amended, after release of the articles
described in the application for a special permit, shall make entry for such articles and deposit the duties and taxes imposed upon or
by reason of importation estimated to be due thereon; or if, in the event of failure to make entry or to deposit such duties and taxes,
he shall pay to the collector of customs as liquidated damages an amount equal to the value of the merchandise as to which there shall
have been default, plus the duties and taxes thereon (it being understood and agreed that the amount to be collected shall be based
upon the quantity and value of such merchandise as determined by the collector of customs, and that the decision of the collector as to
the status of such merchandise, whether free or dutiable, together with the rate and amount of duties and taxes, also shall be binding
on all parties to this obligation);

(2) And if the above-bonded principal shall furnish to the collector of customs all the documents and evidence required by law
or regulations made in pursuance thereof, or, in default thereof, shall pay to the said collector such amounts as liquidated damages as
may be demanded by him in accordance with law and regulations;

(3) And if the above-bonded principal, when the merchandise is to be examined elsewhere than at the public store, wharf,
or other place in charge of a customs officer, shall hold such merchandise at the place to which it will be removed for examination
until the merchandise shall have been released from customs custody by the completion of final examination for purposes of appraisement;
and, at any time before such release, shall transfer the merchandise to such place as the collector of customs may direct; and,
when the merchandise has been corded and sealed, shall keep such cords and seals intact until removed by customs officers; or, in the
event of default, shall pay to the collector of customs an amount equal to the value of the merchandise with respect to which there
has been a default (as set forth in the entries therefor), plus the estimated duties and taxes thereon, as determined at the time of
entry;

*If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Respondent's (petitioner below)
Exhibit No. 6 (b)

(4) And if the above-bounden principal shall redeliver or cause to be redelivered to the order of the collector of customs, on demand by him, in accordance with the law and regulations in effect on the date of the release of said articles, any and all merchandise found not to comply with the law and regulations governing its admission into the commerce of the United States, or in default of redelivery after a proper demand on him, shall pay to said collector such amounts as liquidated damages as may be demanded by him in accordance with the law and regulations, not exceeding the amount of this obligation, for any breach or breaches thereof;

(5) And if the above-bounden principal, in respect of any of the merchandise released from customs custody, shall redeliver or cause to be redelivered to the order of the collector of customs such additional packages or quantities of merchandise as may be desired by the appraiser pursuant to section 499, Tariff Act of 1930, as amended, for the purpose of examination, inspection, or appraisal, upon a demand made at any time before the appraiser's report of appraisal; or, in default of redelivery after a proper demand on him, the above-bounden principal shall pay to said collector such amounts as liquidated damages as may be demanded by him in accordance with the law and regulations, not exceeding the amount of this obligation, for any breach or breaches thereof;

(6) And if the above-bounden principal shall redeliver or cause to be redelivered to the order of the collector of customs for marking pursuant to the provisions of paragraph 367 or 368, or section 304, Tariff Act of 1930, as amended, upon a demand made not later than twenty (20) days after the appraiser's report of appraisal, such of the merchandise as may have been released from customs custody, or, in default of redelivery after a proper demand on him, the above-bounden principal shall pay to the said collector such amounts as liquidated damages as may be demanded by him in accordance with the law and regulations, not exceeding the amount of this obligation, for any breach or breaches thereof;

(7) And if the above-bounden principal after proper notice shall mark, label, clean, fumigate, destroy, export, and do any and all other things that lawfully may be required in the case of any and all merchandise found not to comply with the law and regulations governing its admission into the commerce of the United States, or, in default thereof, shall pay to the collector of customs as liquidated damages an amount equal to the value of the merchandise with respect to which there has been a default as set forth in the entry, plus the estimated duties thereon, as determined at the time of entry;

(8) And if the above-bounden principal shall pay to the collector of customs, when demanded, all duties, taxes, and charges found legally due and unpaid on such consumption entries as may be charged against this obligation; and if the above-bounden principal, when the merchandise is warehoused and within 3 years from the date of original importation withdrawn, in whole or in part, for consumption, shall pay to the said collector of customs the full amount of duties, taxes, charges, and exactions legally due on the merchandise which the collector is required to collect, and shall pay on demand by the collector any other duties, taxes, charges, and exactions found legally due on the merchandise subsequent to withdrawal or found to be due on merchandise remaining in warehouse after the expiration of such 3-year period; all duties, taxes, charges, and exactions, the payment of which is required by this condition of the bond to be paid by the principal herein whether the merchandise shall be regularly withdrawn from public store or bonded warehouse at the original port of entry or at a secondary port by the said principal, or by any person to whom the right to withdraw the said merchandise shall have been transferred, or shall be irregularly or unlawfully withdrawn or removed by the said principal or by any other person whomsoever, and whether or not the merchandise is manipulated in accordance with section 562, Tariff Act of 1930, as amended, unless such duties, taxes, charges, and exactions shall have been duly paid or secured to be paid by the person to whom the right to withdraw such merchandise may have been transferred, or paid by some other person;

(9) And if the above-bounden principal, when the merchandise is entered or withdrawn without the payment of duty for exportation, for transportation, or for transportation and exportation, shall actually cause the said merchandise to be exported or transported to its proper destination, and shall furnish the collector of customs with proof that such merchandise, if entered for exportation, was exported through a customs port of exit under customs supervision and landed beyond the limits of the United States, or, if entered or withdrawn for transportation to another customs port, was delivered to the collector of customs at the port of destination and there properly entered, the said proof to be filed in the form and within the time required by law and regulations or any lawful extension thereof, or, in the event of default, if the above-bounden principal shall pay to the collector of customs for the port of entry or withdrawal the full amount of duties, taxes, charges, and exactions which may be found legally due on such merchandise as to which there shall have been a default;

(10) And if the above-bounden principal, when the merchandise is admitted into the United States as a temporary importation without the payment of duty, as provided for in the provisions of the Tariff Act or other laws indicated in the entries which are charged against this bond, shall return or cause to be returned to the order of the collector of customs any of such merchandise, when demanded by the collector for the purpose of excluding it from the country or for any other purpose, and shall submit such merchandise to the collector prior to exportation thereof for customs inspection and identification, and actually export or destroy said merchandise within the bonded period (or within any lawful extension) in accordance with law and regulations, and shall produce to the collector satisfactory evidence that the said merchandise was actually exported or destroyed, in the form and within the time required by law and regulations, or within any lawful extension of such period; or, in default thereof, shall pay the duties, taxes, charges, and exactions lawfully due, or such amount as liquidated damages as may be demanded by the collector in accordance with law and regulations;

(11) And if the above-bounden principal, when merchandise is granted the right of entry or withdrawal from warehouse and admission into the United States at a reduced rate of duty, or is entered or withdrawn from warehouse or from continuous customs custody elsewhere than in a bonded warehouse without the payment of duty or taxes because of the use or purpose for which imported or withdrawn, as provided for in the Tariff Act or other acts in effect on the date of entry or withdrawal, shall submit to the collector within the time and in the form prescribed by law or regulations, evidence that the merchandise actually has been used in the manner and for the purpose entitling it under the law to such remission or reduction of duty or taxes; or, in default thereof, shall pay the full amount of duties, taxes, charges, or exactions which may be found legally due thereon;

(12) And if the above-bounden principal, when wool or hair of the camel is entered or withdrawn conditionally free of duty, under the provisions of Title I, Schedule II, paragraph 1101 of the Tariff Act of 1930, as amended by section 23 of the Customs Administrative Act of 1938, or when such wool or hair in its imported or any other form is received by transfer under bond from persons to whom it was released under bond, or when such wool or hair in its imported or any other form is received from persons to whom it was transferred under bond, (a) shall not use or transfer for use the said wool or hair in its imported or any other form otherwise than in the manufacture of the articles enumerated in the said paragraph 1101, as amended; (b) and shall use the said wool or hair in its imported or any other form in the manufacture of the articles enumerated in the said paragraph 1101, as amended, in the manner provided for in the said paragraph, as amended, and in accordance with the regulations thereunder; (c) or shall submit proof in the manner prescribed by the said regulations that such wool or hair in its imported or any other form has been transferred to another manufacturer, processor, or dealer who has accepted responsibility under his bond to insure that the merchandise so transferred shall be used only in the manufacture of the said enumerated articles; (d) and shall submit all reports, proof, and abstracts required by law or regulations within the time specified and in the manner provided for therein; (e) and, if any of the said wool or hair in its imported or any other form shall be used or transferred for use otherwise than in the manufacture of the articles enumerated in the said paragraph 1101, as amended, in violation of provision (a) of this condition, shall pay all duties which are required under the provisions of the said paragraph 1101, as amended, to be collected on the wool or hair in its imported or any other form so used or transferred; (f) and, with respect to any wool or hair in its imported or any other form which, while it remains charged against this bond, shall be used or transferred for use otherwise than in the manufacture of the enumerated articles, in violation of provision (a) of this condition, shall pay all penalties which are required by the said paragraph 1101, as amended, to be collected if the said principal fail to report such use or transfer within the 30-day period specified in the said paragraph 1101, as amended, in the manner prescribed in the regulations thereunder;

Respondent's (petitioner below)
Exhibit No. 6 (c)

INSTRUCTIONS

1. The surety on this bond may be one corporation authorized by the Secretary of the Treasury to act as surety, or two responsible individual sureties, unless the collector shall be satisfied that one is sufficient for the protection of the Government. Each individual surety shall justify in a sum not less than the amount of the bond and his sufficiency shall be shown by affidavit made on customs Form 3579. If one individual is accepted as surety, he shall qualify in a sum equal to twice the amount of the bond.

2. A firm, as such, shall not be accepted as a surety, nor a partner for copartners or for a firm of which he is a member. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their stock holdings therein.

3. The name, including full Christian name, and residence of each individual party to the bond shall be inserted in the body thereof, and each such party shall sign the bond with his usual signature on the line opposite the scroll seal, and if executed in Maine or New Hampshire, an adhesive seal shall be affixed opposite the signature. The signature of each individual party to the bonds shall be witnessed by two persons, who shall sign their names as witnesses, followed by their addresses.

4. If the bond is given by persons composing a partnership, the execution of such bond by any member thereof, or by any person holding a power of attorney (which power, or a certified copy thereof, shall be filed with the collector) authorizing him to execute the bond on behalf of such partnership, will bind the other partners in like manner and to the same extent as if such other partners had personally joined in the execution. Partnership bonds shall be executed in the firm name, with the name of the member or attorney of the firm executing same appearing immediately below the firm signature. The names of all persons composing the partnership shall appear in the body of the bond, as, for example, "A, B, and C, composing the firm of A, B, and Co."

5. If the principal or surety is a corporation, the name of the State in which incorporated shall be inserted in the appropriate place in the body of the bond; and the bond shall be executed in the corporate name, immediately followed by the signature of a person duly authorized to act in its behalf; and (except in cases to which Treasury Decision 34045 of January 5, 1914, is applicable) the bond shall be attested under the corporate seal. If the corporation has no corporate seal, the fact shall be stated, in which case a scroll or adhesive seal shall appear following the corporate name.

6. The official character and authority of the person or persons executing the bond for the principal, if a corporation, may be certified by the secretary, assistant secretary, or other officer of the corporation, according to the above form. This certificate need not be executed if a power of attorney has been filed with the collector evidencing the authority of the persons executing the bond on behalf of the principal.

7. A married woman shall not be accepted as surety. If an unmarried woman acts as surety, she shall include in her affidavit on customs Form 3579 a statement setting forth the fact that she is unmarried.

8. Bonds in which alterations and erasures occur shall have placed upon them a statement by an agent of the surety company, or by the individual sureties, that such alterations or erasures were made prior to the signing of the bond; or if such alterations or erasures were made after the bond was signed, the consent of all the parties thereto shall be written in the bond.

Customs Form 1000

District No. _____

Port of _____

Bond approved: _____

Collector of Customs.

U.S. GOVERNMENT PRINTING OFFICE: 1910-0-000000

1000 1000000

Respondent's (petitioner below)
Exhibit No. 6 (d)

Then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

_____	_____	
(Name)	(Address)	
_____	_____	
(Name)	(Address)	
_____	_____	
(Name)	(Address)	
_____	_____	_____ [SEAL]
(Name)	(Address)	(Principal)
_____	_____	_____ [SEAL]
(Name)	(Address)	(Secretary)
_____	_____	_____ [SEAL]
(Name)	(Address)	(Secretary)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the
_____ of the corporation named as principal in the within bond;
that _____, who signed the said bond on behalf
of the principal, was then _____ of said corporation; that I know
his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for
and in behalf of said corporation by authority of its governing body.

[CORPORATE SEAL]

(To be used when no power of attorney has been filed with the Collector of Customs.)
(*) May be executed by the secretary, assistant secretary, or other officer of the corporation.
Note.—The principal statutes now in force and referred to in this certificate are: (a) The Tariff Act of 1906, as amended; (b) the Customs Act; (c) the Plant Quarantine Act; (d) the Copyright Act; (e) the Trade-Mark Law; (f) the laws relating to the marking, stamping, branding, and labeling of imported merchandise; (g) the act to prevent the introduction or dissemination of contagious animal diseases; (h) the act providing for the return of articles imported from the United States for exhibition abroad; (i) the Securities Act; and the acts relating to the importation of birds and animals, for clean, healthy, and vigorous, prize-fight films and pictures, and for the importation of certain goods and articles.

RESPONDENT'S (PETITIONER BELOW) EXHIBITS 7, 8, 9.

Counsel for petitioner and counsel for respondent have agreed that Respondent's (petitioner below) Exhibits 7, 8, and 9, consisting of "Warehouse Withdrawal For Consumption" orders for the months of December 1961, January 1962, and February 1962, for embassies and the other organizations involved in this case need not be reproduced in the joint appendix.

The reasons for this agreement are the voluninous nature of the exhibits, the high cost of reproduction, and the fact that both petitioner and respondent agree that both the dollar amounts and the withdrawal orders evidenced by these exhibits are correct and the withdrawer thereof was the representative of a foreign government or international organization authorized to purchase from International Distributing Corporation the items described on the withdrawal form (See Respondent's Exhibit No. 1(a) and No. 1(b), J. A. 52, 53).

Filed January 30, 1963

FINDINGS OF FACT AND OPINION

The petitioning taxpayer here complains of the assessment of excise taxes on the sale of alcoholic beverages to foreign embassies, ministries, ambassadors, attaches, and international organizations during the months of December, 1961, and February, 1962. It claims that those sales were exempt from the tax. The respondent insists that the assessment was proper.

Findings of Fact

1.(a) The petitioner is a corporation organized under the laws of the State of Maryland, with its principal place of business at 3035 V Street, N.E., in the District of Columbia. It is engaged in the wholesale distribution of alcoholic beverages under authority of District of Columbia Wholesaler's License No. A 15 issued by the Alcoholic Beverage Control Board of the District of Columbia. The petitioner also engages in business as a wholesale liquor dealer under the authority of Wholesale Basic Permit No. PHI-P-872 and Importer's Basic Permit No. PHI-I-60, issued by the United States Government under the provisions of the Federal Alcoholic Administration Act.

(b) The petitioner has on its premises a private bonded warehouse. It has no access or key to the same. The alcoholic beverages here involved were purchased by the petitioner and were imported into the United States by it and were transported from the port of entry to the bonded warehouse in bonded common carriers and were delivered to the private bonded warehouse in the presence of an agent of the Deputy Collector of Customs, who had the key thereto and who unlocked the warehouse and supervised the storing of the liquor and locked it thereafter, and who unlocked the warehouse when it was withdrawn therefrom. While thus stored the contents of the warehouse were in complete control of the custom officials. No Federal tax or duty was imposed until the alcohol beverages were withdrawn from the warehouse and none was imposed when they were sold to foreign embassies and certain international organizations qualified under Public Laws 271 and 291, of the 79th. Congress.

(c) No tax was imposed by the District of Columbia Alcohol Beverage Control Act on any alcohol beverages stored in private bonded warehouses located in the District of Columbia until those beverages were withdrawn from the warehouses.

2. All of the alcoholic beverages, in relation to which the taxes here imposed were assessed, were stored in and withdrawn from the bonded warehouse in the manner stated above. All were sold by the petitioner before withdrawal to foreign embassies or to international organizations mentioned above. The beverages were withdrawn on the basis of an official Government document known as a "withdrawal for consumption, free of duty". The original copy thereof was signed by the purchasing embassy or organization, which was in control of the document and of the withdrawn liquor that was released from the bonded warehouse in the embassy's or organization's name. The invoice was prepared by the wholesaler by the time the custom official arrived to release the beverages. Upon arrival and inspection of the permit or official document that official removed or permitted removal of the quantity of alcoholic beverages specified in the permit, and then closed the bonded warehouse and left the area. In some instances the embassy or its agent picked up the beverages, at other times the petitioner's employees delivered them, and sometimes they were delivered by common carrier.

3.(a) For the month of December, 1961, and February, 1962, the petitioner did not report or pay alcoholic beverage excise taxes on

alcoholic beverages sold to foreign embassies and international organizations of the character mentioned above, which beverages were withdrawn from its bonded warehouse in the manner stated above.

(b) On May 4, 1962, the assessing authority of the District assessed the petitioner in relation to alcoholic beverages sold to embassies, etc., alcoholic beverages excise taxes as follows:

Month of December, 1961

Additional Alcoholic Beverage Tax due as follows:

	<u>Gallons</u>	<u>Tax Rate</u>	<u>Deficiency</u>
Still Wine Containing More than 14 o/o Alcohol	16.80	\$0.33	\$ 5.54
Champagne	14.13	0.45	6.36
Alcohol and Spirits	669.24	1.25	<u>836.55</u>
Total Deficiency			<u>\$848.45</u>

The above gallonage erroneously claimed as a deduction in Schedule D, and represents sales made to Embassies and Legations.

Month of February, 1962

	<u>Gallons</u>	<u>Tax Rate</u>	<u>Deficiency (Refund)</u>
Additional Tax Due As Follows:			
1) Sales to Embassies & Legations (Schedule D)			
a) Wine containing 14 o/o or less alcohol	38.40	\$0.15	\$ 5.76
b) Wine containing more than 14 o/o alcohol	2.25	0.33	0.74
c) Spirits	252.15	1.25	315.19
2) Schedule A-2 items not entered in Line II of Page 1			
a) Wine containing 14 o/o or less alcohol	4.85	0.15	(0.73)
b) Wine containing more than 14 o/o alcohol	6.40	0.33	(2.11)
c) Champagne	9.60	0.45	(4.32)
d) Spirits	83.74	1.25	<u>(104.68)</u>
NET DEFICIENCY			<u>\$209.85</u>

(c) The foregoing excise taxes were paid on May 8, 1962.

Opinion

The petitioner sold alcoholic beverages stored in its private bonded warehouse to embassies and legations in the month of December, 1961, and February, 1962. It did not report such sales or pay excise taxes thereon. The assessing authority of the District of Columbia assessed deficiencies in that tax as follows: For the month of December, 1961, a tax in the amount of \$848.45; and for the month of February, 1962, in the amount of \$209.85. It is from those assessments that the petitioner here appeals.

The disputed taxes were assessed under Sections 25-124(a) and (c) (1), District of Columbia Code, 1961 Edition, which as far as here pertinent reads as follows:

"(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided. * * *

"(c) Said taxes shall be collected and paid in the following manner:

"(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the tenth day of each month, furnish to the Commissioners or their designated agent on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beverage subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the fifteenth day of each month, pay to the Commissioners or their designated agent the tax hereby imposed upon the quantity of beverages subject to taxation hereunder sold by him during the preceding calendar month."

The above sections should be read and considered in relation to Section 25-137 of the Code which provides:

"(a) It shall be unlawful for anyone, except a public or common carrier or the holder of a manufacturer's, wholesaler's or retailer's license issued under this chapter, to transport, import, bring, or ship or cause to be transported, imported, brought, or shipped into the District of Columbia from without the District of Columbia any wines, spirits, or beer in a quantity in excess of one gallon at any one time.

"(b) No public or common carrier shall transport or bring into the District of Columbia wine, spirits, or beer in a quantity in excess of one gallon at any one time for delivery to any one person in the District of Columbia other than the holder of a manufacturer's, wholesaler's or retailer's license issued under this chapter.

"(c) The provisions of this section shall not apply to bona fide possessors of old stocks who are moving into the District of Columbia nor to embassies or diplomatic representatives of foreign countries, nor to wines imported for religious or sacramental purposes, nor to wine, spirits, and beer to be delivered to the holder of manufacturer's, wholesaler's or retailer's license issued under this chapter."

Under authority granted in the Alcoholic Beverage Control Act the Commissioner promulgated regulations for the enforcement and administration of the Act. Section 2-146 of those regulations reads as follows:

"Holders of wholesaler's licenses Class 'A' are hereby authorized to sell and deliver alcoholic beverages within the District of Columbia direct to embassies, diplomatic representatives of foreign countries, and to international organizations designated by Executive Order of the President of the United States as entitled to the privileges outlined in Public Law 291, Seventy-ninth Congress; Provided that, no provision of this section shall be construed as waiving the collection of the District of Columbia taxes upon such alcoholic beverages so sold and delivered. (March 13, 1949)"

The alcoholic beverages involved were imported. At the time of their sale they were stored in a private bonded warehouse on petitioner's business premises, which at all times was under the control of a United States customs official. The alcoholic beverages were transported in their original packages from the port of entry to the bonded warehouse by bonded common carrier. They were stored in the warehouse under the supervision and control of the customs official. They were delivered under his direction to the purchasing embassy or legation under permit consisting of an official United States document commonly known as, or called, a "withdrawal for consumption, free of duty".

The idea of bonded warehouses and their use by the United States custom authorities negatives the proposition that at the time of sale the alcoholic beverages were in the possession of the petitioner. True it is that the private bonded warehouse was physically in the District of Columbia; and the liquors were stored therein; and in that sense they were in the District. In law, however, they were still without that jurisdiction, and did not become subject thereto until they had been withdrawn from the private bonded warehouse and removed from the control of the customs official. In the opinion of the Court the alcoholic beverages sold to the embassies and legations were brought into the District of Columbia by the purchasing embassies and legations.

Section 39 of the Alcoholic Beverage Control Act, which has been codified as Section 25-137 of the Code makes it unlawful to transport, etc. alcoholic beverages into the District in excess of one gallon at any one time. Under subsection (c), however, that provision does not apply to "embassies or diplomatic representatives of foreign countries". That provision has been interpreted by the assessing authority, along with an inference to be drawn from Section 2-146 of the regulations, to permit the transporting, etc. of alcohol beverage free of

the excise tax when the beverages have been purchased from a whole-sale dealer by an embassy, legation or diplomatic representative and delivered to it without the District. ⁽¹⁾ The interpretation is reasonable and correct.

In view of the foregoing ruling it is not necessary for the Court to consider and dispose of the other objections to the assessments raised by the petitioner.

For the reasons stated the Court holds as follows:

(a) That a deficiency in alcoholic beverage excise tax for the month of December, 1961, in the amount of \$848.45, was erroneously assessed against, and collected from the petitioner.

(b) That a deficiency in alcoholic beverage excise tax for the month of February, 1962, in the amount of \$209.85 was erroneously assessed against and collected from the petitioner.

(c) That the petitioner is entitled to refund of the aforesaid taxes, with interest thereon at the rate of 4 per centum per annum from May 8, 1962, to the date of the payment of the refund.

Decision will be entered for petitioner.

s/ Jo. V. Morgan
Judge

(1) In most, if not all instances the beverages are brought into the District, in trucks of the wholesaler, but he is regarded by the assessing authority merely as the agent of the embassy in transporting the beverages, since title thereto passed without the District.

Filed January 30, 1963

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is, by the Court this 30th. day of January, 1963.

ADJUDGED AND DETERMINED, That a deficiency in alcoholic beverage excise tax for the month of December, 1961, in the amount of \$848.45, was erroneously assessed against, and collected from the petitioner.

FURTHER ADJUDGED AND DETERMINED, That a deficiency in alcoholic beverage excise tax for the month of February, 1962, in the amount of \$209.85 was erroneously assessed against and collected from the petitioner.

FURTHER ADJUDGED AND DETERMINED, That the petitioner is entitled to refund of the aforesaid taxes, with interest thereon at the rate of 4 per centum per annum from May 8, 1962, to the date of payment of the refund.

/s/ Jo. V. Morgan

Jo. V. Morgan
Judge

Filed February 14, 1963

**MOTION TO REVISE FINDINGS OF FACT, TO
VACATE DECISION IN FAVOR OF PETITIONER,
AND FOR ENTRY OF DECISION IN FAVOR OF
RESPONDENT**

Respondent, District of Columbia, pursuant to Rule 12(f) of the Rules of Procedure before the District of Columbia Tax Court, moves the Court to revise certain of the findings of fact heretofore entered in this case on January 30, 1963, so as to read as hereinafter set forth and, based upon such revision, to vacate the decision of this Court of January 30, 1963, in favor of petitioner, and to enter a decision in favor of respondent.

The grounds for this motion are as follows:

1. The findings of fact which respondent moves the Court to revise do not accord with, or, in the alternative, do not reflect the evidence adduced at the hearing of this case.
2. The entry by this Court on January 30, 1963, of a decision in favor of petitioner does not accord with the law and evidence applicable to this proceeding, and the decision of January 30, 1963, should be vacated.
3. The findings of fact, revised in accordance with this motion, together with the law applicable to this proceeding, require the entry of a decision in favor of respondent.

The finding of fact which respondent moves the Court to revise and the revisions thereof, are as follows:

1. FINDING OF FACT No. 1 (b)

(a) In the third sentence, after the word "involved" add the words "belonged to and" and,

(b) in the same sentence after the word "imported" add the words "by the petitioner."

(c) In the fourth sentence, immediately after the word "were", strike the rest of the sentence reading "in complete control of the custom officers" and in lieu thereof, add the words "in the joint custody of the petitioner and a proper customs official".

2. FINDING OF FACT No. 1 (c)

Strike the entire finding of fact.

3. FINDING OF FACT No. 2

In the first sentence immediately after the word "assessed", add the words "belonged to the petitioner and".

In the second sentence immediately after the word "sold", add the words "by the petitioner".

DISTRICT OF COLUMBIA TAX COURT

INTERNATIONAL DISTRIBUTING CORPORATIONS, :

Petitioner, :

v. :

**Docket No.
1814**

DISTRICT OF COLUMBIA, :

Respondent.

Filed February 14, 1963

**MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO REVISE FINDINGS OF FACT,
TO VACATE DECISION IN FAVOR OF PETITIONER, AND
FOR ENTRY OF DECISION IN FAVOR OF RESPONDENT**

On January 30, 1963, this Court entered findings of fact and opinion in the above-captioned case.

The Court did not make any specific finding of fact that, as the uncontradicted evidence established, petitioner was the owner and importer of the alcoholic beverages that are the subject matter of this case. Moreover, it made no finding of fact as to custody of the alcoholic beverages after they were imported into the District of Columbia. Since petitioner did not, of course, contend either in its petition or at trial that anyone other than it was the owner of the alcoholic beverages or had imported them into the District, or had sold them to the embassies, diplomatic representatives or members of international organizations, no question is presented in that area.

However, the findings of fact ought clearly to set forth these matters and amendment of the findings in this regard should be made as requested by respondent.

In view of the admitted facts that petitioner owned, imported and sold the alcoholic beverages in controversy, respondent has moved the Court to vacate its decision in favor of petitioner and enter a decision in favor of the District. It is petitioner who seeks a refund of excise taxes based upon the sale by it of alcoholic beverages to foreign embassies, ministries and international organizations. Of course, the request for refund of the taxes is based upon the facts that the alcoholic beverages in controversy were

- (1) owned by the petitioner,
- (2) imported by the petitioner, and
- (3) sold by the petitioner to the foreign embassies and international organizations.

Therefore, the entry by this Court of a decision in favor of the petitioner does not accord with the evidence adduced at the trial of this case.

In addition to the foregoing, the decision of this Court does not accord with the law applicable to this proceeding.

Title 19, U.S.C.A. Section 1555, which defines "Bonded warehouses", provides, in pertinent part, as follows:

"Bonded warehouses

Buildings or parts of buildings and other enclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the collector, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, * * *. Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. * * * (Emphasis Supplied)

The purpose of this type of bonded warehouse is to provide owners of imported merchandise with a bonded storage space upon their own premises and for their own convenience.

Title 27, Section 203, U.S.C.A., which is part of the Federal Alcohol Administration Act, provides, in pertinent part, as follows:

**"§203. Unlawful businesses without permit;
application to state agency**

"In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

"(a) It shall be unlawful, except pursuant to a basic permit issued under this chapter by the Secretary of the Treasury--

"(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

"(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported."

Petitioner is engaged in business as a wholesale liquor dealer under the authority of wholesale basic permit No. PHI-P-372 and importer's basic permit No. PHI-I-60 issued by the United States Government under the above-referred to provision of the Federal Alcohol Administration Act. Section 203 of Title 27, U.S.C.A., makes it clear that it is petitioner who is engaged in the importation of distilled spirits which spirits, after having been imported by petitioner, are stored in a bonded warehouse owned by petitioner.

Section 1555 of Title 19, supra, declares that the proprietor of a bonded warehouse (in this case petitioner) and a proper officer of customs have joint custody over all merchandise stored in a bonded warehouse.

The Court made the following statement in the first sentence of the last paragraph on page 6 of its opinion as follows:

"The alcoholic beverages involved were imported. * * *

The opinion does not state who imported the beverages to which it refers. The third sentence in the last paragraph of the opinion on page 6 states as follows:

"* * *The alcoholic beverages were transported in their original packages from the port of entry to the bonded warehouse by bonded common carrier. * * *

Again, the Court does not refer to the importer of alcoholic beverages or to whom they belonged. The Court in the first sentence of the first complete paragraph on page 7 of its opinion states as follows:

"The idea of bonded warehouses and their use by the United States custom authorities negatives the proposition that at the time of sale the alcoholic beverages were in the possession of the petitioner. * * *

The use of a bonded warehouse merely indicates joint control over products stored in the warehouse by representatives of the

United States, and does not indicate that petitioner did not have possession of the alcoholic beverages that were imported by him and stored in his bonded warehouse.

It is well recognized that the liquor industry is rigidly controlled by government statutes and strict rules and regulations involving the distilling and importing of distilled spirits. It is also well recognized that in spite of this governmental control, a dealer in distilled spirits must still be free to buy and sell these beverages. The Supreme Court of the United States in Taney v. Penn Bank, 232 U.S. Reports 174, 183-186, recognized the harsh realities of the liquor industry and gave a somewhat lengthy dissertation upon this subject as follows:

"* * *The spirits must be entered for deposit in the warehouse under the regulations prescribed by the commissioner and bond must be given for the payment of the tax. The statute gives the form of the entry which, made in triplicate and duly verified, must set forth the name of the person making it, the designation of the warehouse, the specification of the spirits deposited, with the marks and serial numbers of the packages, etc., and a statement of the amount of tax. Withdrawal may be made on payment of the tax--which is payable within eight years--by application to the collector in charge of the warehouse and the making of a withdrawal entry* * *. Provision is made for regauging and for an allowance for loss from leakage or evaporation* * *; and after four years the spirits may be bottled in bond,

in a separate portion of the warehouse set apart for that purpose, under the supervision of the government official* * *. The storekeeper is to keep 'a warehouse-book' in which all deposits and deliveries are to be entered with appropriate description including marks and serial numbers (§3301). And the removal 'of any distilled spirits from a distillery warehouse . . . in any manner other than is provided by law' is punishable by fine and imprisonment (§3296).

"The minute regulations of the statute, and the provision for prolonged governmental control, proceed upon a recognition of the exigencies of the business. It is a matter of common knowledge that the product is not ready to be marketed for consumption when it is drawn from the still. It must undergo an aging process and for this purpose it is kept in store for several years. In laying the tax, Congress has taken this necessity into consideration permitting a long postponement of the required payment, the spirits meanwhile being held in charge of the Government's representative. It is, however, a matter of obvious business importance that the distiller should be able to release the capital represented in the cost of production of the spirits in store and to make it available for further production; and hence the practice is well established to deal with the product in the bonded warehouse by sale or pledge, storage certificates suitably identifying the property being delivered in lieu of the actual transfer of possession. The District Court found as a fact that it is 'the unbroken custom of the trade to treat storage receipts for spirits as completely equivalent to the spirits themselves, and to sell or pledge them freely without question.' This finding is approved by the Circuit Court of Appeals, and the fact that this custom exists we understand to be undisputed.

"It is argued for the appellant that one cannot make himself a warehouseman of his own goods and issue so-called receipts to take the place of the delivery which the law requires to give effect to his sale or pledge* * *. The argument ignores the special circumstances of the case and the restrictions imposed by law upon the distiller. The building is his, but the Government is in complete control. The spirits are his, but he is subject to fine and imprisonment if he attempts to remove them. It is undoubtedly true that the Government is not strictly a bailee. It assumes no responsibility to the distiller for the safe-keeping of the goods* * *. But the immunity which is incident to the exercise of governmental power in no way limits its effect upon the distiller's relation to the goods. They are effectually taken out of his power so that he is absolutely unable to make a physical delivery of them until the tax is paid. On the other hand, to pay the tax and remove the property before the aging process is completed would defeat the object of the deposit for which the statute provides, and would frustrate the purpose of a transfer of spirits in bond, which is an entirely lawful transaction. In these circumstances, the certificates--such as were here used--appropriately represent the property.

"It is said that the distiller need not use his own warehouse but may place the goods in one of the general bonded warehouses established under the act of 1894* * *. The appellee asserts that this would be impracticable; that no general bonded warehouse had been established in the collection district in question; that there are only twelve in the entire country with a capacity that is extremely small in comparison with the output of the distilleries. But, aside from this, the distillery warehouse is equally recognized by law; it is 'a bonded warehouse of the United States.' If it is a fit place for storage, the distiller is not obliged to remove the spirits elsewhere. And while they are thus deposited in conformity with law he is not debarred from passing title or creating a special interest by way of pledge.* * *: (Emphasis Supplied)

In this case it is the petitioner who possesses the basic permit for the importation of alcoholic beverages into the District of Columbia issued by the Secretary of Treasury under Title 27, U.S.C.A., Section 203. Under Title 19, U.S.C.A., Section 1555, petitioner has joint control over all alcoholic beverages which were imported by it and placed in its own private bonded warehouse. Under the above-referred to Titles, 19 and 27, this Court can reach no other conclusion of law other than it is the petitioner who imported the beverages into the District of Columbia and it is the petitioner who had control of these beverages subject to certain United States regulations. Under Section 25-137 (c), D.C. Code, 1961, embassies and diplomatic representatives of foreign countries can import into the District of Columbia all of the alcoholic beverages they desire, free and clear of any District alcoholic beverage taxes. However, it was not the embassies or their diplomatic representatives that did so; it was the petitioner.

The Court agrees in its opinion that petitioner's private bonded warehouse was physically in the District of Columbia but says that in law the beverages which were subsequently bought by the embassies and international organizations were still outside the

jurisdiction of the District. The Court then concludes in the last sentence of the first full paragraph of page 7 of the Opinion as follows:

"* * *In the opinion of the Court the alcoholic beverages sold to the embassies and legations were brought into the District of Columbia by the purchasing embassies and legations."

This conclusion ought to be changed so as to accord with the evidence and law applicable to this case. No evidence whatsoever was presented to indicate that anyone other than petitioner imported the alcoholic beverages into the District of Columbia or sold them.

For the reasons stated above, the Court should revise the findings of fact in accordance with respondent's motion, vacate its decision in favor of petitioner, and enter a decision in favor of respondent.

DISTRICT OF COLUMBIA TAX COURT

**INTERNATIONAL DISTRIBUTING CORPORATION,)
a corporation)**

Petitioner,)

v.)

**DISTRICT OF COLUMBIA,)
A Municipal Corporation)**

Respondent.)

Docket No. 1814

**Filed February
28, 1963**

**OPPOSITION OF PETITIONER, INTERNATIONAL
DISTRIBUTING CORPORATION, TO MOTION OF
RESPONDENT TO REVISE FINDINGS OF FACT,
TO VACATE DECISION, AND FOR ENTRY OF
DECISION IN FAVOR OF THE RESPONDENT**

Comes now, International Distributing Corporation, a corporation, Petitioner, by its attorney, Milford F. Schwartz, and for Opposition to the Motion of the Respondent to Revise Findings of Fact, to Vacate Decision, and for Entry of Decision in Favor of the Respondent, says as follows:

1. The Court's findings of fact, opinion and decision heretofore entered herein are accurate and correct, and in accord with the law of the case and the evidence adduced herein.

2. The Motion of Respondent and the Memorandum in support thereof attempt to advance a concept of the facts and law of the case, which have heretofore been raised by it and passed on by the Court.

3. The District of Columbia's argument does not properly state the position of the Petitioner. Petitioner's Federal Importer's Basic Permit authorizes it to import alcoholic beverages into the United States.

4. Taney vs. Penn Bank, 232 US 174, is wholly irrelevant to the issues of this case.

FILED

MARCH 1, 1963

DOCKET NO. 1814

ORDER AMENDING FINDINGS OF FACT

Upon consideration of the motion of the respondent to revise findings of fact, to vacate decision in favor of petitioner, and for entry of decision in favor of respondent filed herein on February 14, 1963, it is by the Court this 1st day of March, 1963

ORDERED That finding 1(b) of the findings of facts made by the Court, is amended by striking out the word "imported" in the third sentence thereof and inserting in lieu thereof the following "purchased by the petitioner and were imported into the United States by it."

AND IT IS FURTHER ORDERED That finding 2 of the findings of fact is amended by inserting after the word "sold" in the second sentence thereof the following "by the petitioner before withdrawal".

AND IT IS FURTHER ORDERED That in all other respects the motion is overruled.

/s/ Jo. V. Morgan
Judge

DISTRICT OF COLUMBIA TAX COURT
INTERNATIONAL DISTRIBUTING CORPORATION, :

Petitioner, :

v. :

Docket No. 1814

DISTRICT OF COLUMBIA, :

Filed March 29, 1963

Respondent. :

PETITION FOR REVIEW OF A DECISION OF
THE DISTRICT OF COLUMBIA TAX COURT

To the Honorable Chief Judge and Circuit Judges of the United States Court of Appeals for the District of Columbia Circuit:

1. Respondent, District of Columbia, petitions for a review by the United States Court of Appeals for the District of Columbia Circuit, of a decision of the District of Columbia Tax Court in the above-entitled case.

2. The decision for which review is sought declared erroneous a deficiency assessment of alcoholic beverage excise taxes for the month of December, 1961, and the month of February, 1962.

3. The decision of the Tax Court was entered on January 30, 1963. Respondent, on February 14, 1963, filed in the Tax Court a motion for revision of the Court's findings of fact, the vacating of the decision in favor of petitioner, and entry of a decision in favor of respondent. On March 1, 1963, the Tax Court filed an order granting in part and denying in part respondent's above-referred to motion.

* * *

DISTRICT OF COLUMBIA TAX COURT

INTERNATIONAL DISTRIBUTING CORP.,)	Counsel:
a corporation,)
Petitioner,) Milford F. Schwartz, Esq.
vs.)
) No. 17833
DISTRICT OF COLUMBIA,)
Respondent.) DOCKET NO. 1814
)
) Address: 1511 K Street, N. W.
) Washington 5, D. C.

DOCKET

DATE	PROCEEDINGS	MEMORANDUM
<u>1962</u>		: Excise Tax
Aug. 1	Petition filed - Taxpayer notified - Corporation Counsel and Finance Office served.	: \$1,058.30
Sept. 12	Hearing set for Sept. 27 - Certificate of Service.	:
Oct. 17	Motion to continue case - Granted to Oct. 24.	:
Oct. 22	Subpoena.	:
Oct. 24	Hearing - Robert E. McCally, Esq., for District.	:
Nov. 23	Motion to Extend Time Within Which to File Petitioner's Brief - Certificate of Service.	:
Nov. 27	Granted - Certificate of Service.	:
Dec. 7	Brief on Behalf of Petitioner - Certificate of Service.	:
<u>1963</u>		:
Jan. 7	Motion for Extension of Time Within Which to File Brief for Respondent - Granted to Jan. 28 - Certificate of Service.	:

1963

PROCEEDINGS

- Jan. 23 Brief for Respondent filed - Certificate of Service
- Jan. 30 Findings of Fact, Opinion & Decision -
Certificate of Service.
- Jan. 30 Motion for Leave to File Brief of Amicus Curiae
for Marvin & Snead Sales Corp. - Brief - Granted.
- Jan. 30 Memorandum, Re: Motion For Leave To File
Brief of Amicus Curiae.
- Feb. 14 Motion To Revise Findings of Fact, To Vacate
Decision In Favor Of Petitioner, And For
Entry of Decision In Favor Of Respondent -
Memorandum of Points And Authorities In
Support Of Motion To Revise Findings Of
Fact, To Vacate Decision In Favor Of
Petitioner, And For Entry Of Decision In
Favor Of Respondent.
- Feb. 28 Opposition of Intervenor, Marvin & Snead Sales
Corp. to Motion to Revise Findings of Fact,
To Vacate Decision and For Entry of Decision
In Favor of Respondent - Certificate of Service.
- Feb. 28 Opposition of Petitioner International Distributing
Corp., to Motion of Respondent to Revise
Findings of Fact, To Vacate Decision, and For
Entry of Decision In Favor of Respondent -
Certificate of Service.
- Mar. 1 Order Amending Findings of Fact - Certificate
of Service.
- Mar. 29 Petition For Review Of A Decision Of The
District of Columbia Tax Court - Certificate
of Service.
- Apr. 15 Designation of Record - Certificate of Service.
- Apr. 22 Counter Designation of Record - Certificate of
Service.

BRIEF FOR PETITIONER

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 17,833

DISTRICT OF COLUMBIA,

Petitioner,

v.

**INTERNATIONAL DISTRIBUTING
CORPORATION,**

Respondent.

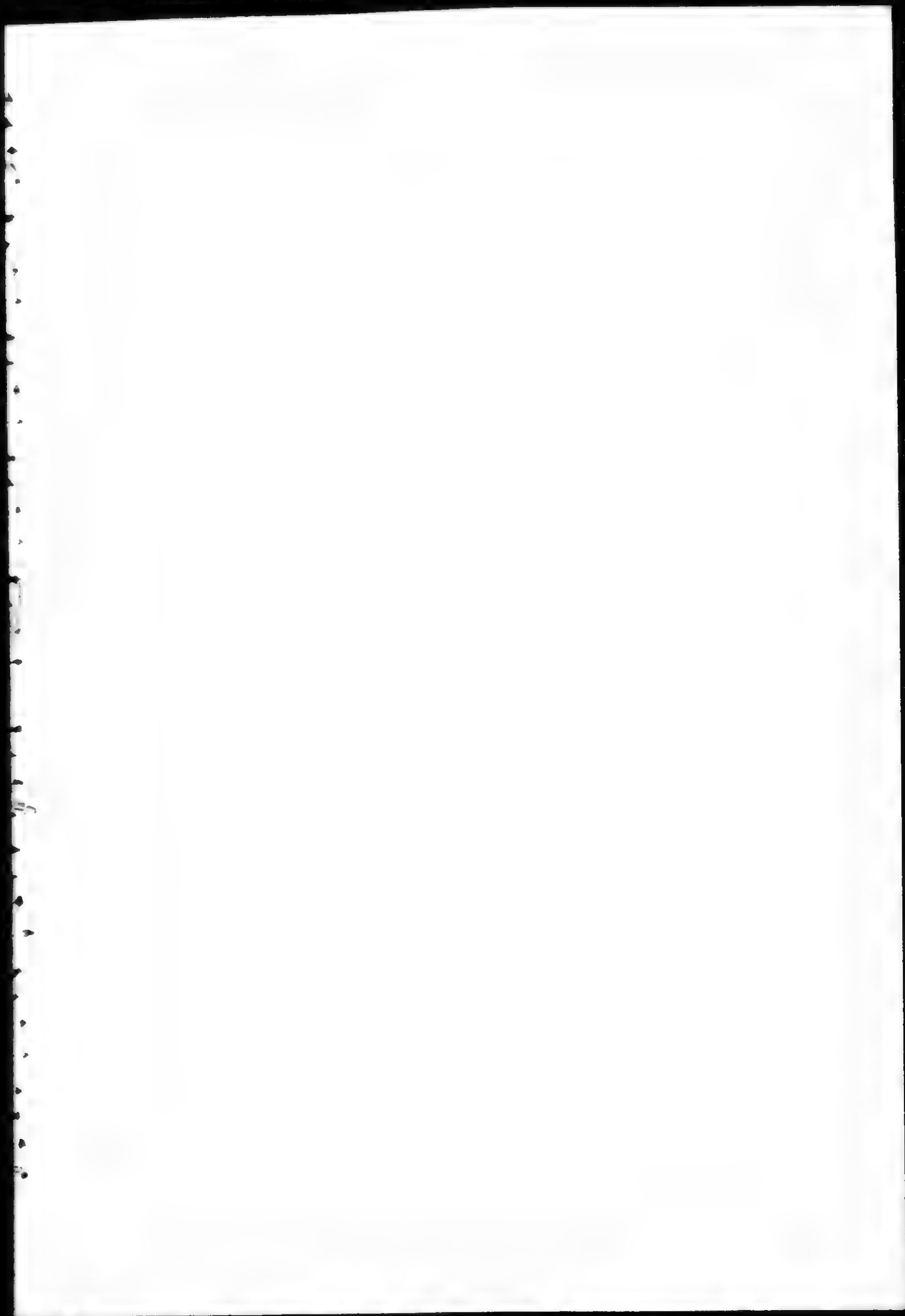
**ON PETITION FOR REVIEW OF A DECISION
OF THE DISTRICT OF COLUMBIA TAX COURT**

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 29 1963

Nathan J. Paulson
CLERK

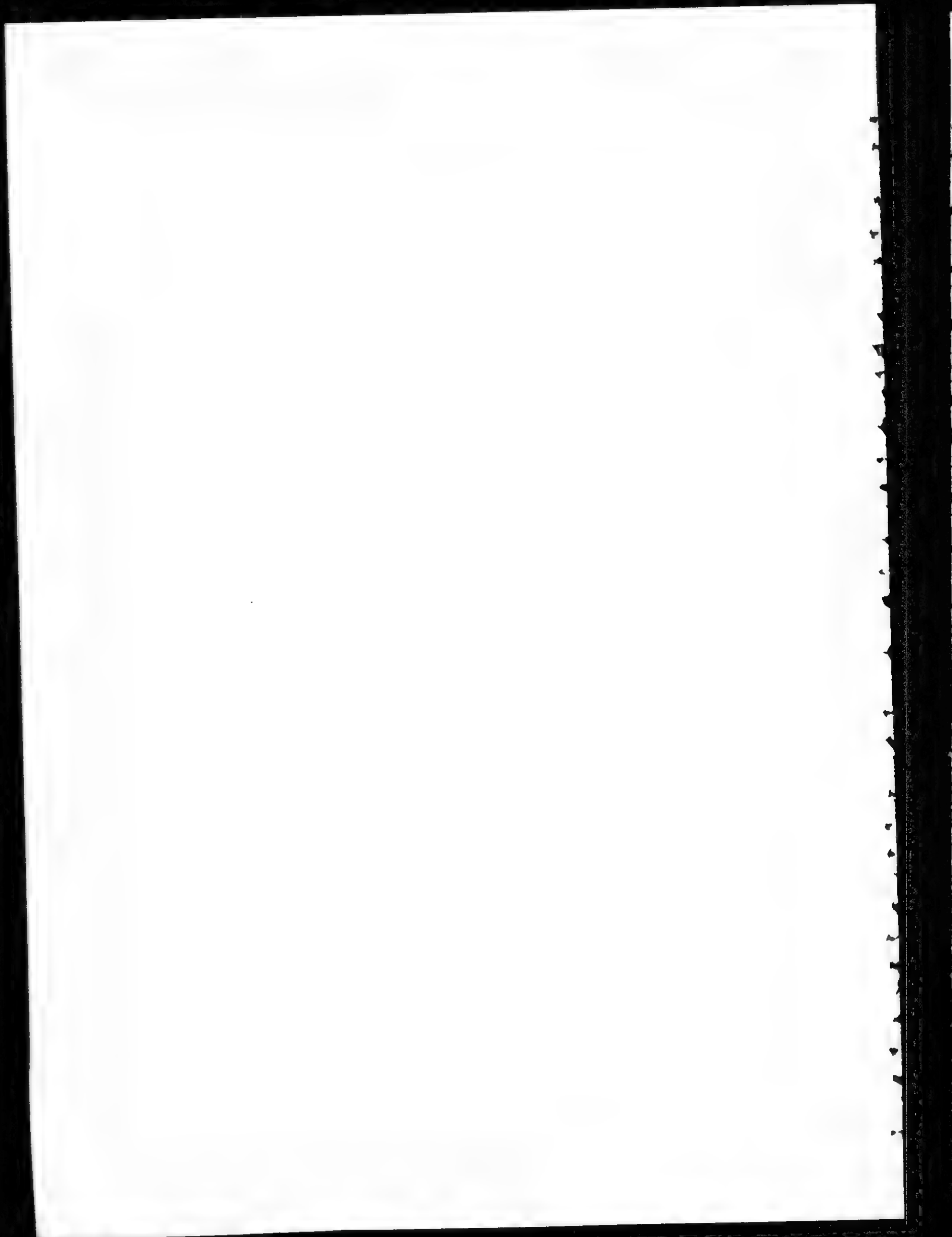
CHESTER H. GRAY, *an*
Corporation Counsel, D. C.
MILTON D. KORMAN, *OK*
Principal Assistant Corporation
Counsel, D. C.
HENRY E. WIXON, *OK*
Assistant Corporation Counsel, D. C.
ROBERT E. McCALLY, *an*
Assistant Corporation Counsel, D. C.
Attorneys for Petitioner,
District Building,
Washington 4, D. C.



QUESTION PRESENTED

The question presented is:

Was not the District correct in assessing against respondent, a wholesale dealer licensed under the District of Columbia Alcoholic Beverage Control Act, alcoholic beverage taxes on sales of alcoholic beverages made by respondent in the District to embassies and international organizations from a stock of beverages imported into the District by respondent and stored by it in its private customs bonded warehouse?



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**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

DISTRICT OF COLUMBIA,

Petitioner,

v.

**INTERNATIONAL DISTRIBUTING
CORPORATION,**

Respondent.

No. 17,833

BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

This is a proceeding to review a decision of the District of Columbia Tax Court, based upon its finding of fact and conclusions of law, which declared erroneous assessments of alcoholic beverage taxes totaling \$1,058.30 made by the District of Columbia against International Distributing Corporation, Inc., on the sale by International during the months of December of 1961 and February of 1962 of alcoholic beverages to foreign embassies, ministers, ambassadors, and international organizations. The Tax Court ordered a refund of said taxes to be made to International (J. A. 69, 74, 79). After the entry on January 30, 1963 of the decision below (J. A. 79), the District filed a timely motion to vacate the same, to revise the findings of fact, and to enter a decision in

its favor (J. A. 80). On March 1, 1963, the Tax Court entered an order amending finding of fact 1b and finding of fact 2. All other aspects of the District's motion were overruled (J. A. 94). Petition for review by this Court was filed by the District on March 29, 1963 (J. A. 95).

Jurisdiction of the Court is invoked pursuant to Sections 3 and 4, Title IX of the Act of August 17, 1937, 50 Stat. 673, ch. 690, as added by Section 8 of the Act of May 16, 1938, 52 Stat. 371, ch. 223; and as amended by Section 5 of the Act of July 26, 1939, 53 Stat. 1108, as amended by Sections 3 and 4 of the Act of July 10, 1952, 66 Stat. 544, 546, ch. 649 (Sections 47-2403 and 47-2404, D. C. Code, 1961).

STATEMENT OF THE CASE

Under authority of District of Columbia Wholesaler's License No. A-15, respondent, International Distributing Corporation, is engaged in the District in the wholesale, sale, and distribution of alcoholic beverages. It engaged in business as^a/wholesale liquor dealer also by authority of a federal wholesaler's basic permit and, in addition, possesses an importer's basic permit (J. A. 10, 69).

Respondent has on its premises a class 2 customs bonded warehouse in which it stores "bonded" alcoholic beverages it has for sale (J. A. 17, 18). A class 2 customs bonded warehouse so maintained may not contain beverages of any other firm, and all beverages placed therein are subject to internal revenue taxes and duty (J. A. 18, 70).

The alcoholic beverages involved were purchased by the respondent, imported by it into the District of Columbia, and there placed in respondent's bonded warehouse in the presence of an agent of the Deputy Collector of Customs. This agent, who possesses the only key to the warehouse, unlocks the warehouse, supervises the storing therein of alcoholic beverages, and locks the warehouse after such storage (J. A. 70). In order to withdraw beverages from its warehouse, respondent must have an agent of the Deputy Collector of Customs unlock the warehouse and supervise the withdrawal. According to Title 19, U. S. C. A., Section 1555, alcoholic beverages in bonded warehouses are under the charge of a proper officer of Customs who, together with the proprietor of the warehouse, has joint custody of all merchandise stored in that warehouse. Federal tax or duty is not imposed upon the stored beverages, but, unless the beverages are designated for sale and delivery to an embassy or other exempt purchaser, federal tax and duty thereon must be paid prior to withdrawal thereof. No alcoholic beverage excise tax is imposed by the District of Columbia on alcoholic beverages stored by a licensee in a private bonded warehouse within the District until such beverages are sold by the licensee (J. A. 70).

When alcoholic beverages stored in respondent's custom bonded warehouse were sold by respondent to foreign embassies or to international organizations not subject to federal tax and duty, delivery was accomplished as follows.

The alcoholic beverages were withdrawn on the basis of an

its favor (J. A. 80). On March 1, 1963, the Tax Court entered an order amending finding of fact 1b and finding of fact 2. All other aspects of the District's motion were overruled (J. A. 94). Petition for review by this Court was filed by the District on March 29, 1963 (J. A. 95).

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Respondent has on its premises a class 2 customs bonded warehouse in which it stores "bonded" alcoholic beverages it has for sale (J. A. 17, 18). A class 2 customs bonded warehouse so maintained may not contain beverages of any other firm, and all beverages placed therein are subject to internal revenue taxes and duty (J. A. 18, 70).

The alcoholic beverages involved were purchased by the respondent, imported by it into the District of Columbia, and there placed in respondent's bonded warehouse in the presence of an agent of the Deputy Collector of Customs. This agent, who possesses the only key to the warehouse, unlocks the warehouse, supervises the storing therein of alcoholic beverages, and locks the warehouse after such storage (J. A. 70). In order to withdraw beverages from its warehouse, respondent must have an agent of the Deputy Collector of Customs unlock the warehouse and supervise the withdrawal. According to Title 19, U. S. C. A., Section 1555, alcoholic beverages in bonded warehouses are under the charge of a proper officer of Customs who, together with the proprietor of the warehouse, has joint custody of all merchandise stored in that warehouse. Federal tax or duty is not imposed upon the stored beverages, but, unless the beverages are designated for sale and delivery to an embassy or other exempt purchaser, federal tax and duty thereon must be paid prior to withdrawal thereof. No alcoholic beverage excise tax is imposed by the District of Columbia on alcoholic beverages stored by a licensee in a private bonded warehouse within the District until such beverages are sold by the licensee (J. A. 70).

When alcoholic beverages stored in respondent's custom bonded warehouse were sold by respondent to foreign embassies or to international organizations not subject to federal tax and duty, delivery was accomplished as follows.

The alcoholic beverages were withdrawn on the basis of an

official government document entitled "Withdrawal for consumption, free of duty". The original of this document was signed by the purchasing embassy or organization, which thereafter received control of the document and the merchandise it represented (J. A. 70, 71). Certain other documents required in connection with the withdrawal were likewise prepared in advance thereof. Arrangements were then made for a customs official to come to the warehouse to make the withdrawal in compliance with the withdrawal permit. Only those beverages which had been specified by the permit for withdrawal were removed from the warehouse, after which the warehouse or bonded area was closed by the customs officer (J. A. 71). Thereafter, in the case of respondent, the purchaser picked up the merchandise at the warehouse, or had the beverages delivered by common carrier (J. A. 71).

On imported alcoholic beverages sold by respondent during the months of December of 1961 and February of 1962 to various foreign embassies, ministries, and international organizations, the District of Columbia assessed against it alcoholic beverages taxes in the total amount of \$1,058.38 (J. A. 1). The Tax Court declared these assessments erroneous and ordered refunds of the taxes to be made to International Distributing Corporation (J. A. 79). The District then filed a motion to vacate the decision, to revise the findings of fact, and for entry of a decision in its favor (J. A. 80). Thereafter, the Tax Court entered an order amending finding of fact 1 (b) and finding of fact 2, but in all other respects overruled the District's motion (J. A. 94). This appeal followed.

STATUTES AND REGULATIONS INVOLVED

Title 27, U. S. C. A. , Section 203, provides, in pertinent part,
as follows:

"§ 203. Unlawful business without permit; application to state agency

In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this chapter by the Secretary of the Treasury —

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported."

Title 19, U. S. C. A. , Section 1555, provides, in pertinent part,
as follows:

"§ 1555. Bonded warehouses

Buildings or parts of buildings and other inclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for

warehousing, or taken possession of by the collector, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor.

* * * "

Section 23 (a) of the District of Columbia Alcoholic Beverage Control Act (Act of January 24, 1934, 48 Stat. 319, ch. 4, as amended), [Section 25-124 (a) and Section 25-124 (c) (1), D. C. Code, 1961], provides, in pertinent part, as follows:

"(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this Act, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: * * *.

(c) Said taxes shall be collected and paid in the following manner:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the tenth day of each month, furnish to the Commissioners or their designated agent on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beverage subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the fifteenth day of each month, pay to the Commissioners or their designated agent the tax hereby imposed upon the quantity of beverages subject to taxation hereunder sold by him during the preceding calendar month."

Section 39 of the District of Columbia Alcoholic Beverage Control Act, supra, Section 25-137, D. C. Code, 1961, provides, in pertinent part, as follows:

"(a) It shall be unlawful for anyone, except a public or common carrier or the holder of a manufacturer's, wholesaler's, or retailer's

license issued under this Act, to transport, import, bring, or ship or cause to be transported, imported, brought, or shipped into the District of Columbia from without the District of Columbia any wines, spirits, or beer in a quantity in excess of one gallon at any one time.

(b) No public or common carrier shall transport or bring into the District of Columbia wine, spirits, or beer in a quantity in excess of one gallon at any one time for delivery to any one person in the District of Columbia other than the holder of a manufacturer's, wholesaler's, or retailer's license issued under this Act.

(c) The provisions of this section shall not apply to bona fide possessors of old stocks who are moving into the District of Columbia nor to embassies or diplomatic representatives of foreign countries, nor to wines imported for religious or sacramental purposes, nor to wine, spirits, and beer to be delivered to the holder of a manufacturer's, wholesaler's, or retailer's license issued under this Act."

Section 11 (c) of the District of Columbia Alcoholic Beverage Control Act, supra, Section 25-111 (c), D. C. Code, 1961, provides, in pertinent part, as follows:

"Licenses issued under authority of this Act shall be of twelve kinds:

* * *

(c) Wholesaler's license, class A. — Such a license shall authorize the holder thereof to sell beverages from the place therein described to another license holder under this Act for resale or to a dealer licensed under the laws

of any State or Territory of the United States for resale, and, in addition, in the case of beer or light wines, to a consumer, said beverages to be sold only in barrels, kegs, sealed bottles, and other closed containers, which said barrels, kegs, sealed bottles, and other closed containers shall not be opened after sale, nor the contents consumed, on the premises where sold. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this Act.

* * * "

The District of Columbia Alcoholic Beverage Control Act authorizes the Commissioners of the District of Columbia to promulgate regulations to carry out the intent of the Act.

Section 2-146 of the District Alcoholic Beverage Control Regulations adopted by the Commissioners provides as follows:

"§2-146. SALE TO EMBASSIES.

Holder's of wholesaler's licenses Class "A" are hereby authorized to sell and deliver alcoholic beverages within the District of Columbia direct to embassies, diplomatic representatives of foreign countries, and to international organizations designated by Executive Order of the President of the United States as entitled to the privileges outlined in Public Law 291, Seventy-ninth Congress; Provided that, no provision of this section shall be construed as waiving the collection of the District of Columbia taxes upon such alcoholic beverages so sold and delivered. (March 13, 1949.)"

STATEMENT OF POINTS

1. The District of Columbia Tax Court erred in holding that alcoholic beverages belonging to and imported into the United States by respondent and stored by it in its custom-bonded warehouse in the District of Columbia were not in the possession of respondent.

2. The District of Columbia Tax Court erred in holding that respondent's imported alcoholic beverages stored in respondent's custom-bonded warehouse in the District were, nevertheless, still without the District of Columbia, and did not become subject to District jurisdiction until such beverages had been withdrawn from that warehouse.

3. The District of Columbia Tax Court erred in concluding that respondent's imported alcoholic beverages sold by it to embassies and legations were brought into the District by the purchasing embassies and legations and were not, therefore, subject to District alcoholic beverages taxes.

4. The District of Columbia Tax Court erred in canceling in their entirety the deficiencies in alcoholic beverage excise taxes assessed against respondent by the District and in ordering a refund thereof with interest thereon to be made to respondent.

SUMMARY OF ARGUMENT

The Tax Court's conclusion that respondent's beverages stored in respondent's custom-bonded warehouse were not in the possession of respondent and were not subject to District jurisdiction, i. e. taxation, until the beverages had been removed from the bonded warehouse and the control of the customs officials is incorrect.

Title 19, U. S. C. , Section 1555, provides that all merchandise stored in bonded warehouses is in the joint control or custody of the proper officer of customs and the proprietor of the warehouse. The evidence adduced in this case clearly established respondent as the owner and importer into the District of alcoholic beverages which respondent thereafter sold and delivered in the District to embassies and international organizations.

Section 11 (c) of the District of Columbia Alcoholic Beverage Control Act specifies that a wholesale licensee and a Class "A" license may sell beverages from his place of business only to another license holder for resale. However, Section 2-146 of the regulations promulgated by the Commissioners by express authority of Section 11 (c) of the Act allows such Class "A" wholesalers to sell and deliver alcoholic beverages within the District direct to embassies, diplomatic representatives and international organizations,

but the regulation explicitly states that it shall not be construed as waiving the collection of District of Columbia taxes upon such sales.

The District Alcoholic Beverage Control Act does not exempt licensees from payment of a tax on sales to embassies or international organizations. The effect of the Tax Court's decision is to provide an exemption which is not authorized by the Act, and is contrary to Section 2-146 of the regulations promulgated by the Commissioners. Had the Congress intended to exempt sales to embassies and international organizations, the District of Columbia Alcoholic Beverage Control Act would have so provided.

ARGUMENT

The assessment of beverage taxes against respondent on sales to embassies and international organizations from its bonded storage of imported beverages was correct.

The Tax Court, in deciding this case, based its opinion on an incorrect assumption. It said:

"The idea of bonded warehouses and their use by the United States custom authorities negatives the proposition that at the time of sale the alcoholic beverages were in the possession of the petitioner. True it is that the private bonded warehouse was physically in the District of Columbia; and the liquors were stored therein; and in that sense they were in the District. In law, however, they [respondent's beverages] were still without that jurisdiction, and did not become subject thereto until they had been withdrawn from the private bonded warehouse and removed from the control of the customs official. * * *

Based on this incorrect assumption, the Tax Court thereafter concluded:

" * * * In the opinion of the Court the alcoholic beverages sold to the embassies and legations were brought into the District of Columbia by the purchasing embassies and legations."

Title 19, Section 1555, U. S. C. , which defines "bonded warehouses", provides, in pertinent part:

"Buildings or parts of buildings and other inclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the collector, or under seizure, or for the manufacture of merchandise in

bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, * * * Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. * * *." (Emphasis supplied)

The Tax Court was clearly incorrect in its assumption that beverages stored by respondent in its own bonded warehouse were not in the possession of the respondent. Title 19, U. S. C., Section 1555, supra, specifically states that all merchandise stored in bonded warehouses (such as that owned by respondent) is in the joint custody of a proper officer of the customs and the proprietor of the warehouse. See also Wells Fargo Nevada Nat. Bank v. Haslett Warehouse Co., 60 Cal. App. 225, 212 P. 647, 648.

Title 27, U. S. C., Section 203, which is part of the Federal Alcohol Administration Act, provides, in pertinent part:

**" § 203. Unlawful business without permit;
application to state agency**

In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this chapter by the Secretary of the Treasury —

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported. * * *."

Respondent is engaged in business as a liquor dealer under the authority of a wholesaler's basic permit and an importer's basic permit issued by the United States Government. It is clear that, acting pursuant to Section 203, Title 27, U. S. C., respondent is engaged in the importation into the United States of distilled spirits which, after having been brought by respondent into the District of Columbia, are stored in respondent's bonded warehouse and thereafter sold by respondent.

Respondent possesses the basic permit for importation of the beverages into the District and respondent, together with a customs officer (who, obviously, is brought into the picture only to protect the interest of

the federal government in taxes and duties), has control over imported beverages stored in respondent's private bonded warehouse.

Section 23 (a) of the District of Columbia Alcoholic Beverage Control Act (Act of January 24, 1934, 48 Stat. 319, ch. 4, as amended (Section 25-124 (a) and Section 25-124 (c) (1), D. C. Code, 1961)), provides, in pertinent part, as follows:

"(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this Act, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided:

* * *

(c) Said taxes shall be collected and paid in the following manner:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the tenth day of each month, furnish to the Commissioners or their designated agent on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beverage subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the fifteenth day of each month, pay to the Commissioners or their designated agent the tax hereby imposed upon the quantity of beverages subject to taxation hereunder sold by him during the preceding calendar month."

(Emphasis supplied)

Section 39 of the Alcoholic Beverage Control Act, supra (Section 25-137, D. C. Code, 1961) provides, in pertinent part, as follows:

"(a) It shall be unlawful for anyone, except a public or common carrier or the holder of a manufacturer's, wholesaler's, or retailer's license issued under this Act, to transport, import, bring, or ship or cause to be transported, imported, brought, or shipped into the District of Columbia from without the District of Columbia any wines, spirits, or beer in a quantity in excess of one gallon at any one time.

(b) No public or common carrier shall transport or bring into the District of Columbia wine, spirits, or beer in a quantity in excess of one gallon at any one time for delivery to any one person in the District of Columbia other than the holder of a manufacturer's, wholesaler's or retailer's license issued under this Act.

(c) The provisions of this section shall not apply to bona fide possessors of old stocks who are moving into the District of Columbia nor to embassies or diplomatic representatives of foreign countries, nor to wines imported for religious or sacramental purposes, nor to wine, spirits, and beer to be delivered to the holder of a manufacturer's, wholesaler's, or retailer's license issued under this Act." (Emphasis supplied)

Sections 23 (a) and 39 of the Alcoholic Beverage Control Act specify that, with the exceptions referred to in Section 39 (c) of the Act, all spirits in excess of one (1) gallon must be delivered to a local licensee in the District. Spirits, when sold by a licensee are, with exceptions not pertinent here, subject to the tax imposed by section 23 (a) of the Act. The tax is imposed upon the licensee, not the consumer, and it is the licensee who is responsible for the payment of the tax to the District. American Sales Co. v. District of Columbia, 110 U. S. App. D. C. 258, 292 F. 2d 751.

Although under Section 39 of the Alcoholic Beverage Control Act, supra (Section 25-137 (c), D. C. Code, 1961), embassies and diplomatic representatives of foreign countries may, if they so desire, bring or import into the District of Columbia unlimited quantities of alcoholic beverages, the uncontradicted evidence in this case established that respondent was the owner and importer into the District of the alcoholic beverages sold by it and upon which the taxes here in controversy were imposed.

The Tax Court's conclusion that:

" * * * the alcoholic beverages sold to the embassies and legations were brought into the District of Columbia by the purchasing embassies and legations * * *"

is an entirely erroneous conclusion on the part of the Tax Court.

Section 11 (c) of the District of Columbia Alcoholic Beverage Control Act (Section 25-111 (c), D. C. Code, 1961), provides, in pertinent part, as follows:

"Sec. 11. Licenses issued under authority of this Act shall be of twelve kinds: (As amended June 29, 1953.)

* * *

(c) Wholesaler's license, class A. — Such a license shall authorize the holder thereof to sell beverages from the place therein described to another license holder under this Act for resale or to a dealer licensed under the laws of any State or Territory of the United States for resale, and, in addition, in the case of beer or light wines, to a consumer, said beverages to be sold only in barrels, kegs, sealed bottles, and other closed

containers, which said barrels, kegs, sealed bottled, and other closed containers shall not be opened after sale, nor the contents consumed, on the premises where sold. It shall not authorize the sale of beverages to any other person except as may be provided by regulations promulgated by the Commissioners under this Act.

* * * "

Under this section of the Act, respondent is licensed to sell alcoholic beverages from its place of business in the District to certain license holders, dealers, and consumers, but not to embassies and international organizations. However, the Commissioners of the District of Columbia have, by virtue of the authority vested in them, promulgated a regulation providing as follows:

"2-146. SALE TO EMBASSIES.

Holders of wholesaler's licenses Class "A" are hereby authorized to sell and deliver alcoholic beverages within the District of Columbia direct to embassies, diplomatic representatives of foreign countries, and to international organizations designated by Executive Order of the President of the United States as entitled to the privileges outlined in Public Law 291, Seventy-ninth Congress; Provided that, no provision of this section shall be construed as waiving the collection of the District of Columbia taxes upon such alcoholic beverages so sold and delivered. (March 13, 1949)."
(Emphasis supplied)

Nothing can be clearer than that this regulation, while specifically providing that holders of wholesaler's licenses Class "A" are authorized to sell and deliver alcoholic beverages within the District of Columbia to embassies, diplomatic representatives, and international organizations, unmistakably provides that it shall not be construed as

waiving the collection of District taxes upon such beverages when so sold and delivered. If the Tax Court's ruling is correct that, in law, respondent's bonded beverages were still without the District of Columbia, then it would appear that respondent, even though it holds a Class "A" wholesaler's license which limits it to the sale and delivery of alcoholic beverages within the District of Columbia, has, in fact, sold beverages which were not within the District of Columbia.

The District of Columbia Alcoholic Beverage Control Act does not exempt from District tax sales by a licensee to embassies and international organizations. Section 23 of the Act, supra, provides that a tax shall be levied and collected on all alcoholic beverages imported or brought into the District by a holder of a wholesaler's license, with the exception of beverages sold for resale to another dealer licensed under the Act or to a dealer licensed under the laws of any State or Territory of the United States. The tax is payable by the licensee when the beverages are sold by him. Moreover, the regulation promulgated by the Commissioners allowing a wholesaler, such as respondent, to sell to embassies and international organizations, specifically provides that these sales shall not be exempt from tax. The effect of the Tax Court's decision is to read into the Alcoholic Beverage Control Act an exemption which Congress did not provide, and which does not appear anywhere in the Act, even by implication. A further effect is to strike down and make meaningless the regulation of the

Commissioners which specifically denies a tax exemption on sales by a licensee to embassies and international organizations.

All doubts should be resolved against claimed exemptions. This privilege or immunity cannot be made out by inference or implication, but must be conferred in terms too clear and plain to be mistaken and in fact admitting of no reasonable doubt. See U. S. Trust Co. of N. Y. v. Helvering, 307 U. S. 57, 60, 59 S. Ct. 692, 83 L. Ed. 1104; Phipps v. C. I. R., 91 F.2d 627, 630, cert. den. 302 U. S. 742, 82 L. Ed. 574; Stone v. Interstate Natural Gas Co., 103 F.2d 544, 549, aff. 308 U. S. 522, 60 S. Ct. 292, 84 L. Ed. 442, rehearing den. 308 U. S. 639; United States v. Stewart, 311 U. S. 60, 71, 61 S. Ct. 102, 109, 85 L. Ed. 40.

CONCLUSION

For the reasons stated above, the decision of the Tax Court in favor of respondent ought to be reversed and a decision entered in favor of the District of Columbia.

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BRIEF FOR RESPONDENT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,833

DISTRICT OF COLUMBIA, *Petitioner,*

v.

INTERNATIONAL DISTRIBUTING CORPORATION, *Respondent.*

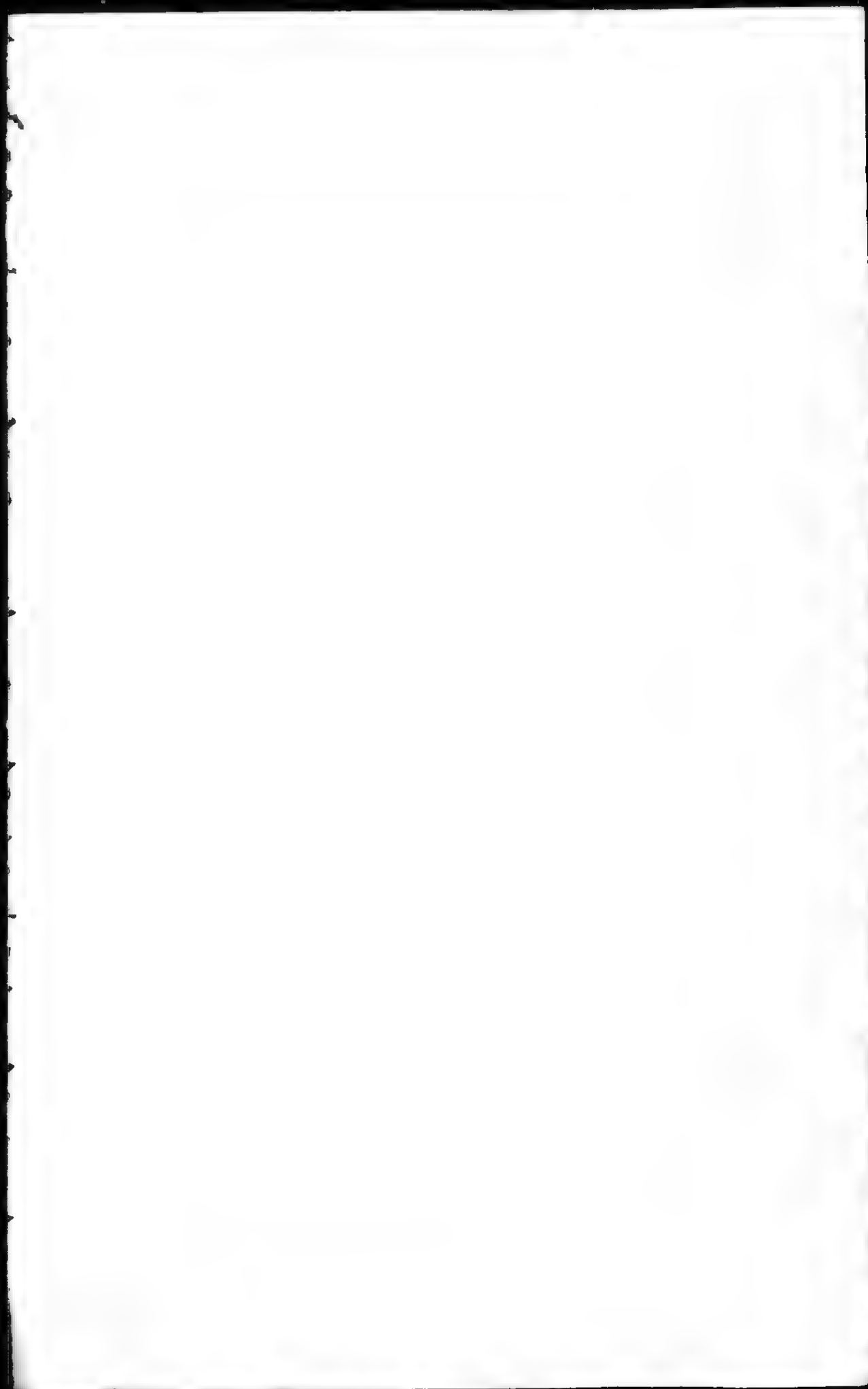
On Petition For Review of a Decision of the District
of Columbia Tax Court

United States Court of Appeals
for the District of Columbia Circuit

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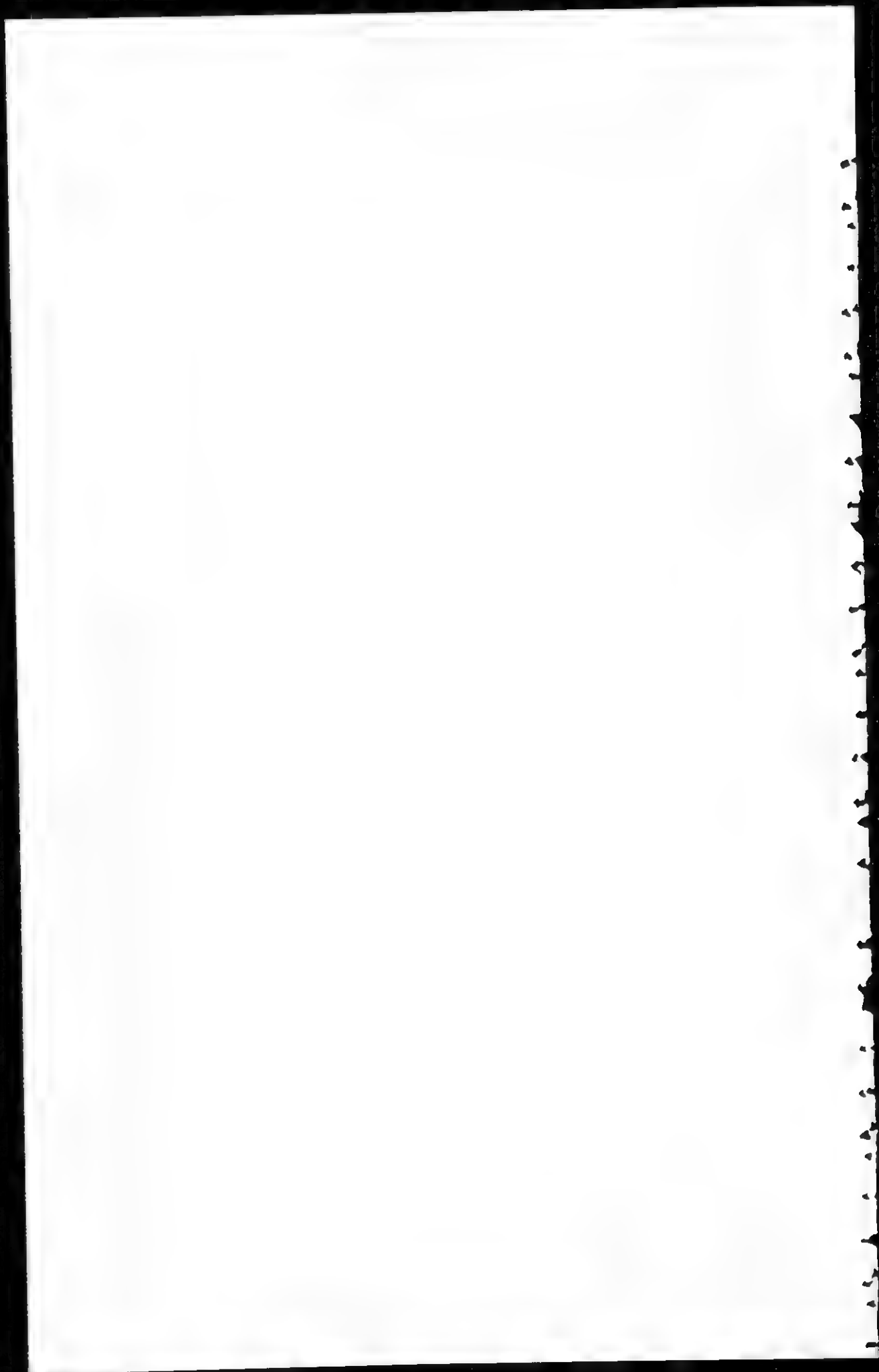
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QUESTION PRESENTED

Was not the District of Columbia Tax Court correct in finding that taxes levied against the Respondent on sales of alcoholic beverages held in a United States Custom bonded warehouse to embassies, diplomatic representatives of foreign countries, and to international organizations were erroneous and illegal.



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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,833

DISTRICT OF COLUMBIA, *Petitioner,*

v.

INTERNATIONAL DISTRIBUTING CORPORATION, *Respondent.*

On Petition For Review of a Decision of the District
of Columbia Tax Court

BRIEF FOR RESPONDENT

COUNTER STATEMENT OF THE CASE

The petitioner, the District of Columbia, prosecutes this appeal from a judgment of the District of Columbia Tax Court, holding a tax assessment levied against the respondent by the District of Columbia as erroneous.

Respondent, a corporation organized under the laws of the State of Maryland, with its principal place of business at 3035 V Street, N.E., in the District of Columbia, is engaged in the wholesale distribution of alcoholic

beverages under authority of District of Columbia wholesaler's License No. A15 issued by the Alcoholic Beverage Control Board of the District of Columbia. The Respondent also engages in business as a wholesale liquor dealer under the authority of Wholesale Basic Permit No. PHI-P-872 and Importer's Basic Permit No. PHI-1-60, issued by the United States Government under the provisions of the Federal Alcoholic Administration Act.

The tax in controversy is an illegally assessed District of Columbia excise tax on Alcoholic beverages for the months of December, 1961 and February, 1962 on imported beverages sold by Respondent from a United States Customs bonded warehouse directly to representatives of foreign embassies and ministries, their Ambassadors and personnel, to resident representatives of foreign governments and to international organizations, authorized to make such purchases under applicable federal authority. All of the imported alcoholic beverages so sold were for the personal consumption and private use of the resident foreign officials so authorized to make such purchases.

The alcoholic beverages in question are imported from abroad by the respondent and are immediately placed in a United States Customs bonded warehouse located on the premises of respondent where the goods are then under the joint custody of both the proprietor of the warehouse and a United States Customs officer. Although custody is joint, the exclusive control of the disposition of the imported goods rests solely within the United States Government through its designated representative, the Customs officer.

The imported alcoholic beverages may be released only by means of an international transaction, initiated by a request from an authorized foreign purchaser, and completed by affirmative action on the part of both the Department of State and the Treasury Department in granting the request and directing the Customs officer to

release a quantity of the imported goods to the authorized foreign purchaser.

Inasmuch as the imported goods are at all times either under the exclusive control of the United States Government or after official release have passed to the resident foreign representative they are never in law within the jurisdiction of the District of Columbia for tax purposes. Notwithstanding these circumstances, the District of Columbia levied an excise tax against the respondent on the goods transferred by the United States Customs officer from the bonded warehouse to the resident foreign purchaser, for purchases made in December, 1961 and February, 1962.

The District of Columbia contends that the tax was levied upon the wholesaler, not the foreign purchaser and as such is valid. The tax was paid by the respondent under protest, and suit was brought for the return of the payment. The District of Columbia Tax Court found the tax to be erroneous and ordered repayment to the respondent with interest at the rate of 4 per centum per annum from May 8, 1962 to the date of payment of the refund.

The petitioner then moved the District of Columbia Tax Court to revise its findings of fact, to vacate decision in favor of the Respondent and for entry of decision in its favor. After opposition to this motion by the respondent, the District of Columbia Tax Court amended its findings in part, which in no way control the final disposition of this appeal, and overruled Petitioner's motion in all other respects.

From the final order of the District of Columbia Tax Court, this present appeal followed.

STATUTES

59 Stat. 673 (1945), 22 USC Section 288f (1958)

"Applicability of reciprocity laws.

The privileges, exemptions, and immunities of international organizations and of their officers and employees, and members of their families, suites, and servants, provided for in sections 288-288f of this title, sections 116, 1426, 1607, 1621, 3466, 3469, 3475, and 3797 of Title 26, and section 409 of Title 42, shall be granted notwithstanding the fact that the similar privileges, exemptions and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: PROVIDED, That nothing contained in said sections shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities provided in said sections from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States."

63 Stat. 666 (1949), 19 USC Section 196a (1958)

"Free importation of articles for members of armed forces of foreign countries; rules and regulations; effective date.

(a) Articles entered, or withdrawn from warehouse, for consumption in the United States, its Territories, or possessions for the official use of persons who are on duty in the United States, its Territories or possessions as members of the armed forces of any foreign country, or for the personal use of any such person or of any member of his immediate family, shall be admitted free of all duties and internal revenue taxes imposed upon or by reason of importation (including taxes imposed by sections 3350 and 3360 of Title 26) and of all customs charges and exactions; PROVIDED, That if the Secretary of the Treasury shall find that any such foreign country does not accord similar treatment with respect to members of the armed forces of the United States or members

of their immediate families, the privileges herein granted, shall, after collectors of customs have been officially advised on such finding, be accorded with respect to members of the armed forces of such foreign country, or members of their immediate families, only to the extent that similar treatment is accorded by that country with respect to members of the armed forces of the United States or members of their immediate families."

68A Stat. 900 (1954), 26 USC Section 7511 (1958)

Section 7511. Exemption of consular officers and employees of foreign states from payment of internal revenue taxes on imported articles.

(a) Rule of exemption.

No internal revenue tax shall be imposed with respect to articles imported by a consular officer of a foreign state, or by an employee of a consulate of a foreign state, * * * at any time during the exercise of his functions * * *; if

(2) the articles are imported by the officer or employee for his personal or official use; and

(3) the foreign state grants an equivalent exemption to corresponding officers or employees of the Government of the United States stationed in such foreign state.

DISTRICT OF COLUMBIA ALCOHOLIC BEVERAGE CONTROL ACT

D. C. CODE, Section 25-124 (b)

"Said taxes shall be collected by and paid to the Collector of Taxes of the District of Columbia and shall be deposited in the Treasury of the United States to the credit of the District of Columbia."

SUMMARY OF ARGUMENT

The District of Columbia Tax Court was correct in declaring erroneous the excise tax assessed by Petitioner against Respondent for sales of alcoholic beverages from a United States Customs bonded warehouse to tax exempt resident foreign purchasers.

The exemption statutes are a means of affording to resident foreign officials here on the business of their governments, the same dignities that are afforded to United States officials resident in their countries. Congress in enacting the exemption statutes made it quite clear that neither directly nor indirectly would that class of authorized exempted purchaser be made to suffer the burden of local taxation. Therefore a tax levied against Respondent by the Petitioner, which in reality is nothing less than a tax against the resident foreign official flies in the face of the exemption statutes, and is an invalid attempt by the Petitioner to tax in an area pre-empted by the Federal Government.

It would be folly to entertain the notion that Congress intended to grant an exception to taxation on the one hand and on the other to permit the imposition of a tax upon the product where in the end result there is a concomitant price increase borne directly by that class of persons originally exempted from this very payment.

The alcoholic beverages imported from abroad for sale to resident foreign representatives are never *in law* within the jurisdictional limits of the District of Columbia for tax purposes. While awaiting transfer to the tax exempt class of purchaser the imported goods are stored in a United States Customs bonded warehouse and are under the exclusive control of the United States Government. Upon completion of an international transaction for the release of a quantity of the goods, they pass directly to the resident foreign purchaser for his own personal consump-

tion and private use. At no time do the imported goods fall within the taxing jurisdiction of the District of Columbia, notwithstanding their physical presence within the boundaries of the Federal city.

An attempt to assess a tax under the facts of the instant case is invalid as a tax upon an instrumentality of the United States Government.

The tax levied against Respondent for sales of imported alcoholic beverages from a United States Customs bonded warehouse to resident foreign officials is an unlawful, discriminatory confiscation of private property without due process of law and as such violative of the Fifth Amendment to the Constitution of the United States. There is little or no consistency in the application of the District of Columbia taxing provisions. This inconsistency is tantamount to illegality.

ARGUMENT

I

The Policy Underlying the Enactment of 19 USC Section 196(a) and 22 USC Section 288f Compels the Affirmance of the District of Columbia Tax Court Opinion Holding District of Columbia Excise Taxes Levied Upon Sales of Alcoholic Beverages from United States Customs Bonded Warehouses to Embassies, Diplomatic Representatives of Foreign Countries and to International Organizations as Erroneous.

Title 19 of the United States Code, Section 196 (a) granting immunity from federal, state or local taxation to foreign officials resident on official business in the United States provides:

Section 196a. Free importation of articles for members of armed forces of foreign countries; rules and regulations; effective date.

(a) Articles entered, or withdrawn from warehouse, for consumption in the United States, its Territories, or possessions for the official use of persons

who are on duty in the United States, its Territories or possessions as members of the armed forces of any foreign country, or for the personal use of any such person or of any member of his immediate family, shall be admitted free of all duties and internal revenue taxes imposed upon or by reason of importation (including taxes imposed by sections 3350 and 3360 of Title 26) and of all customs charges and exactions: **PROVIDED** That if the Secretary of the Treasury shall find that any such foreign country does not accord similar treatment with respect to members of the armed forces of the United States or members of their immediate families, the privileges herein granted, shall, after collectors of customs have been officially advised on such finding, be accorded with respect to members of the armed forces of such foreign country, or members of their immediate families, only to the extent that similar treatment is accorded by that country with respect to members of the armed forces of the United States or members of their immediate families.

See also 19 CFR Section 10.30 granting a like privilege to members and attaches of foreign embassies and legations and other representatives of foreign governments.

Further, 22 USC Section 288f implements the above statutory provision by extending similar benefits to international organizations and immunizing them from taxation. It provides:

Section 288f. Applicability of reciprocity laws.

The privileges, exemptions, and immunities of international organizations and of their officers and employees, and members of their families, suites, and servants, provided for in sections 288-288f of this title, sections 116, 1426, 1607, 1621, 3466, 3469, 3475, and 3797 of Title 26, and section 409 of Title 42, shall be granted notwithstanding the fact that the similar privileges, exemptions and immunities granted to a foreign government its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: **PROVIDED**, That nothing contained

in said sections shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities provided in said sections from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States.

In addition to the above statutes, 26 USC Section 7511 provides in pertinent part:

7511. Exemption of consular officers and employees of foreign states from payment of internal revenue taxes on imported articles.

(a) Rule of exemption.

No internal revenue tax shall be imposed with respect to articles imported by a consular officer of a foreign state or by an employee of a consulate of a foreign state, . . . at any time during the exercise of his functions . . . ; if

.

(2) the articles are imported by the officer or employee for his personal or official use; and

(3) the foreign state grants an equivalent exemption to corresponding officers or employees of the Government of the United States stationed in such foreign state.

It should be noted at this point that effective August 31, 1963, 19 USC Section 196 (a) and 26 USC Section 7511 will be embodied within the Tariff Schedules of the United States provided for under and promulgated pursuant to the Tariff Classification Act of 1962. Their removal from the now existing provisions of the United States Code, and their placement within the tariff schedules, however, in no way repeals the purpose of these provisions.

In enacting the above provisions, Congress made clear in unequivocal fashion both its intent to exempt the local foreign establishment from taxation and the method by

which this was to be accomplished. Obviously the very purpose of this legislation was to put into law what prior thereto had been long standing tradition, and to place local representatives of foreign governments in a position coextensive with that occupied in their own land. These provisions have a singular purpose of promoting internal harmony between the United States of America and its sister member nations of the international community. Any act upon the part of the District of Columbia inconsistent with that purpose is a violation of these duly enacted Federal laws and of international law.

The position occupied by a foreign nation resident in the United States through its diplomatic and military representatives with respect to local taxation has been aptly illustrated in the case of *French Republic v. Board of Sup'rs of Jefferson County, et al.*, 200 Ky. 18, 252 SW 124 (1923). There it was stated:

"In construing the taxation provisions of our Constitution, we should be careful not to overlook the nature of a tax. It is an enforced contribution of money or other property assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state on persons or property within its jurisdiction for the purpose of defraying the public expenses. . . .

"In other words, a tax operates in invitum and is in no way dependent upon the will or contract, expressed or implied, of the persons taxed. . . .

"In the next place, taxes are imposed on the theory that the taxpayer should pay a portion of the expenses incurred in the protection of his person or property, and as applied to ordinary persons and corporations this principle seems eminently fair and just; but as applied to independent nations it is clearly opposed to the spirit of international amity, which should prompt every nation to guard and protect the personal property of all other nations that happens

to be temporarily within its jurisdiction, without levying a tribute for that purpose.

• • • • •

"Hence, if one nation enters the territory of another with its consent, for the purpose of mutual intercourse, it does so with the implied understanding that it does not intend to degrade its dignity by placing itself or its sovereign rights within the jurisdiction of the other, and we know of nothing more calculated to degrade the dignity of an independent nation than for another to attempt to exercise over it the sovereign right of taxation.

"Moreover, the provisions of our constitution should be construed in the light of history and the uniform dealing of one power with another. So far as we are aware, no state and no nation, at the time of the adoption of our constitution, had ever assumed the right to tax the personal property of a foreign power that happened to be temporarily within its jurisdiction. • • • Therefore we are constrained to hold that the framers of our Constitution did not intend to inaugurate a policy so opposed to international usage, so incompatible with the dignity of independent nations, and so likely to result in the loss of the goodwill of those whose friendship we have always prized. As the property was not taxable, it should not have been assessed. • • •"

The District of Columbia relying upon its rule making authority under the Alcoholic Beverage Control Act of 1934 has seen fit to obstruct the obvious intention of Congress in enacting the exemption statutes, by interpreting the language of that act included in the District of Columbia Code under Sections 25-124 (a), (b) and (c) (1) as all inclusive, not admitting of any exceptions. Further, they have promulgated an administrative regulation under the Act whereby they have empowered wholesalers to sell directly to resident representatives of foreign governments, but have included a proviso expressly withholding any waiver of a collection of the tax on such a

sale (2-146, Regulations, Alcoholic Beverages, March 13, 1949). Sections 25-124 (a), (b) and (c) (1) of the District of Columbia Code (Alcoholic Beverage Control Act of 1934) referred to above provide:

Section 124

(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: • • •

(b) Said taxes shall be collected by and paid to the Collector of Taxes of the District of Columbia and shall be deposited in the Treasury of the United States to the credit of the District of Columbia.

(c) Said taxes shall be collected and paid in the following manner:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the tenth day of each month, furnish to the Commissioners or their designated agent on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beverage subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the fifteenth day of each month, pay to the Commissioners or their designated agent the tax hereby imposed upon the quantity of beverages subject to taxation hereunder sold by him during the preceding calendar month.

It is openly admitted by the Respondent that Section 25-124 (a) contains no express, specific exception to the assessment of the instant tax for the benefit of resident foreign officials, but a close analysis of that section and of

section 25-124 (c) (1) when viewed against the background of the legislative intent of the exemption statutes admits of just exactly that exception. *Stone, Commissioner of Franchise Tax v. Interstate Natural Gas Co.*, 103 F. 2d 544 (CCA 5th 1939), aff'd 308 U.S. 522 (1939), rehearing denied 308 U.S. 639 (1940), is not controlling. The total exemption from taxation claimed in the case now on review does not rest upon mere implication, but rather upon the express provisions of federally created exemption statutes.

In the report of the Ways and Means Committee accompanying H.R. 4489, 79th Congress, 1st Session, November 12, 1945, it was stated in clear and concise language with respect to exemption from taxation of foreign officials:

"With respect to the specific matters of Customs duties and internal revenue taxes, imposed upon or by reason of importation, and procedures for collection and enforcement of these duties and taxes, the privileges, exemptions, and immunities extended international organizations are those accorded foreign governments under similar circumstances."

"Section 6 provides that international organizations shall be exempt from all property taxes imposed by or under the authority of any Act of Congress, including such as are applicable to the District of Columbia, and also that they shall have the same exemptions from state and local taxes as does the United States Government . . ." (Emphasis supplied)

It was further reported that, "(2) Foreign governments and diplomatic officials enjoy substantially broader exemptions from excise taxes than those which would be extended international organizations under this Bill; . . . This Bill was passed and is now embodied in 22 USC Section 288f.

The reporting Committee could not have made itself more clear on the matter. It was never intended that an

instrumentality of a foreign sovereign should suffer the burden of a domestic tax assessment. And this view is entirely in keeping with modern and traditional conceptions of international relations.

Sections 25-124 (c) (1) makes mandatory the reporting of sales by manufacturers or wholesalers of alcoholic beverages *subject to taxation*, and enjoins the payment of such taxes imposed upon the alcoholic beverages so *subject to taxation*. It is submitted that any amount of alcoholic beverages sold to resident foreign officials from United States Customs bonded warehouses as in the case *sub judice* are free of this reporting and payment requirement as not being subject to taxation because of the clear and unequivocal language contained in the Federally created exemption statutes, the language of the Congressional Committee report giving rise to one of those statutes and the tradition of international intercourse between nations to so exempt those foreign officials residing in a country not their own. To hold otherwise is to fly in the face of simple logic and to give to a District of Columbia revenue provision a never intended meaning.

Phipps v. Commissioner of Internal Revenue, 91 F. 2d 627 (CCA 10th 1937), cert. denied 302 U.S. 742 (1937), is not relevant. That case on petition to review a decision of the Board of Tax Appeals questioned whether a gift of first Liberty Loan Bonds was immune from the gift tax imposed by the Revenue Act of 1932; a matter wholly irrelevant to the question now before this court.

It is contended by the petitioner, the District of Columbia, that the assessment now under review is not levied upon a resident foreign official but rather upon the licensee, the wholesaler, and as such is not obstructive of any Congressional intent to exempt the former from taxation. Viewing the circumstances of this case in the realistic light of the workaday world, an excise upon the licensee is no more than an excise upon the resident foreign

official. Congress in exempting the class of persons from taxation intended exemption from *all* taxation and from whatever method it might be imposed. It would be folly to entertain the notion that Congress intended to grant an exception from taxation on the one hand and on the other to permit the imposition of a tax upon the product where in the end result there is a concomitant price increase borne directly by that class of persons originally exempted from this very payment. *American Sales Company v. District of Columbia*, 110 U.S. App. D.C. 258, 292 F. 2d 751 (1961), is not relevant.

The proper implementation of federal legislation is a matter peculiarly within the province of the federal government and no other legislative or administrative body may either ingeniously or ingenuously by legislation or regulation accommodate its own idea of that proper implementation at the expense of the federal government. Conduct inconsistent with federally created exemptions to revenue laws is invalid; so, the requirement imposed by the District of Columbia in levying a tax upon sales of alcoholic beverages from United States Customs bonded warehouses to embassies, diplomatic representatives of foreign countries and to international organizations is erroneous and invalid. *United States v. Stewart*, 311 U.S. 60 (1940), rehearing denied 311 U.S. 729 (1940); and *United States Trust Co., Executor v. Helvering, Commissioner of Internal Revenue*, 307 U.S. 57 (1939), are not apposite. *Stewart*, decided the question whether income received from the sale at a profit of farm loan bonds issued by joint stock land banks under the Federal Farm Loan Act of 1916, was taxable, where the interest earned from the bonds was tax exempt. The sole question involved in the *United States Trust Co.* case, was whether the proceeds of a War Risk insurance policy payable to a deceased veteran's widow were properly included in his gross estate under a federal estate tax. Neither of these matters have no bearing on the instant case.

II

A Sale of Alcoholic Beverages, Stored in a United States Customs Bonded Warehouse, to Embassies, Diplomatic Representatives of Foreign Countries and to International Organizations is a Sale Without the Jurisdictional Limits of the District of Columbia and as Such is Not Taxable by the District of Columbia

The District of Columbia Tax Court was entirely correct in finding that notwithstanding the physical presence of the United States Customs bonded warehouse within the limits of the District of Columbia, *in law* the alcoholic beverages contained therein were without the jurisdictional boundaries of the Federal city. The Court states in its opinion:

"The idea of bonded warehouses and their use by the United States custom authorities negatives the proposition that at the time of sale the alcoholic beverages were in the possession of the petitioner. True it is that the private bonded warehouse was physically in the District of Columbia; and the liquors were stored therein; and in that sense they were in the District. In law, however, they were still without the jurisdiction, and did not become subject thereto until they had been withdrawn from the private bonded warehouse and removed from the control of the customs official. In the opinion of the Court the alcoholic beverages sold to the embassies and legations were brought into the District of Columbia by the purchasing embassies and legations." (JA 77)

The requisite jurisdictional contacts necessary to uphold a tax assessment require more than the mere physical presence of the person or thing to be taxed. There must be control over the object of the tax. Under the circumstances of the instant case there is a total lacking of such control, and any attempt on the part of the District of Columbia to levy an assessment is invalid.

Alcoholic beverages shipped into the United States from abroad for consumption by resident foreign officials

are in reality shipped directly to those officials. The licensee-wholesaler in this country acts merely as an agent for the recipient of the goods—a convenient conduit by which ordering and delivery is accomplished in an expeditious manner.

Upon receipt of the imported goods by the licensee-wholesaler, they are segregated out from the general stock of merchandise on hand and kept secure in the United States Customs bonded warehouse. Security over the imported alcoholic beverages is dictated by 46 Stat. 743 (1930) as amended, 19 USC Section 1555 (1958) which provides in pertinent part:

“Buildings or parts of buildings and other inclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the collector, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under the supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. . . .”

A reading of the language of the statute shows that custody over the goods stored in the Customs bonded warehouse is joint between the proprietor thereof and a United States Customs officer. But exclusive *control* over the goods is vested solely in the Customs officer. The proprietor of

the bonded warehouse has no control as to the final disposition of the goods contained therein. Disposition is controlled by the resident foreign official's request for a portion of the goods, coupled with affirmative action by both the Department of State and the Treasury Department, thereby releasing the goods from federal control free of any tax assessment. This concerted action between the foreign representative and our own government is the controlling function that allows release of the alcoholic beverages, and not the authorization to the wholesaler to withdraw in his ministerial capacity a quantity of the bonded merchandise.

The elements of *joint custody* and *exclusive control* were set out in proper fashion in *Wells Fargo Nevada Nat. Bank of San Francisco v. Haslett Warehouse Co.*, 60 Cal. App. 225, 212 Pac. 647 (Dist. Ct. of App. 1922).

"Unless the goods in controversy be released from said bonded warehouse by said collector of customs, defendant is unable and cannot deliver said goods to plaintiff, because said goods are stored, as plaintiff well knew when purchasing the warehouse receipt therefor, in a United States bonded warehouse and said goods are in the joint custody of defendant and the collector of customs and subject to the exclusive control of said collector of customs with respect to delivery of said goods and the release of said goods from said bonded warehouse; . . . that said goods were in storage in a bonded warehouse and subject to the control of said collector and subject to the rules and regulations duly made and issued by the secretary of the treasury, for the government and control of bonded warehouses and goods stored therein."

It should be noted, that 19 USC Section 1555 makes no mention of the specific word "possession", nor does it expressly or in any manner allude to the fact that possession of the bonded goods is in the proprietor of the warehouse. It speaks only with respect to joint custody, and

case decision has shown that control of the goods is exclusively given over to the federal government through its representative, the customs officer. It is therefore submitted that the offhand conclusion of the District of Columbia, appearing at page 14 of Petitioner's brief, that, "The Tax Court was clearly incorrect in its assumption that beverages stored by respondent in its own bonded warehouse were not in the possession of the respondent.", is itself clearly incorrect.

Since the alcoholic beverages are under the exclusive control of the United States while in the bonded warehouse they remain without the jurisdiction of the District of Columbia immune for taxation, and once designated for receipt by the resident foreign representative through an international transaction the goods fall strictly within the property of that foreign representative. Therefore, the goods at no time are *in law* within the taxable jurisdiction of the District of Columbia. This is especially so since the exemption statutes were enacted for the specific purpose of immunizing foreign representatives from federal, state and local taxation. The goods in the instant case are no more involved within the flow of commerce within the District of Columbia than was the milk in *Embassy Dairy Inc. v. Camalier*, 93 U.S. App. D.C. 364, 211 F. 2d 41 (1954). Because of the foregoing reasons the District of Columbia Tax Court was correct in finding the alcoholic beverages involved never to have been within the jurisdiction of the District of Columbia for tax purposes, and that finding must be affirmed.

III

The District of Columbia Tax Assessment Upon Imported Goods Stored in United States Customs Bonded Warehouses is Invalid as a Tax Upon an Instrumentality of the United States Government

It has been shown that the alcoholic beverages involved in the instant case were under the exclusive control of the United States Government while stored in the Customs bonded warehouse. Upon request by a resident foreign official for a quantity of the merchandise and the granting of that request by the United States Government, title to the goods passed directly to that foreign official. Inasmuch as petitioner has admitted that the tax is not assessed against the resident foreign official, the assessment of necessity must be levied prior to withdrawal of the goods from the bonded warehouse. At that time the goods are without the jurisdictional limits of the District of Columbia notwithstanding their physical presence within the bonded warehouse located within the territorial boundaries of the Federal city. Therefore, the assessment is upon an instrumentality of the United States Government and invalid as such. The federal government is free of all state and local taxation provisions so to better operate and serve the pressing needs of the nation at large. Just as the federal government is immune from taxation so are its agents and representatives. The United States Customs official in charge of the Customs bonded warehouse is a duly designated agent of the United States and serves in a controlling capacity over goods imported into the United States. In this capacity he holds joint custody over any and all imported merchandise held in a Customs bonded warehouse along with the proprietor of that warehouse. Control over the merchandise though is vested solely in that Customs officer as a representative of the United States. During that period of control any local tax levied against the goods under his control whether said to be levied against the joint custodian or against the goods

themselves is in effect a levy against the Customs officer. As such, the tax levy is an invalid attempt to tax an instrumentality of the United States. See *Standard Oil Company of California v. Johnson Treasurer of California*, 316 U.S. 481 (1942).

IV

The Tax Assessed Against Respondent on Imported Goods Held in United States Customs Bonded Warehouses is Arbitrary and Discriminatory and Violative of the Fifth Amendment to the Constitution of the United States

The nature of a taxing provision was well defined in *French Republic v. Board of Sup'rs of Jefferson County*, supra :

"It is an enforced contribution of money or other property assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state on persons or property within its jurisdiction for the purpose of defraying the public expenses. * * *"
(emphasis supplied)

One of the most basic rules in the field of taxation enjoins the taxing authority to accord equal treatment to all members of the class subject to the tax. Not all persons may be subject to the tax, but all so subject must be treated alike.

Even a cursory perusal of the District of Columbia taxing provisions governing sales of imported alcoholic beverages from Customs bonded warehouses show that the tax plan is haphazard, has little or no consistency and is discriminatory in nature in that it casts the tax burden upon a few within the larger group purportedly taxed. In effect, it is an unlawful, discriminatory confiscation of private property without due process of law, thus violating the Fifth Amendment to the Constitution of the United States. The patch-work tax program of the District of Columbia bears out this conclusion. This very court only recently has

described the alcoholic beverage taxing statutes of the District of Columbia in *American Sales Company v. District of Columbia, Supra*, at 259:

"The problems presented are the familiar ones of attempting to construe and apply the badly drawn taxing statutes of the District of Columbia, which give rise to numerous problems of interpretation for both administrators and courts."

Notwithstanding the fact that section 25-124(a) of the District of Columbia Code places a tax upon all alcoholic beverages brought into the District of Columbia, not all are taxed. There is no assessment made where a District wholesaler ships the goods out of the District of Columbia to another wholesaler.

Nor is there any tax imposed upon shipments of imported alcoholic beverages sent into the District by outside wholesalers for consumption by resident foreign officials. It should be noted at this point that because of the illegal tax imposed upon District wholesalers prior to the District of Columbia Tax Court declaring the assessment an erroneous one, District wholesalers progressively lost more and more business because resident foreign officials dealt with outside wholesalers who were not so assessed.

Further, there is no tax levied upon District wholesalers selling to United States military installations within the City. Practically speaking, is there any difference between a sale to a United States military installation as distinguished from a foreign military representative? This question must be answered in the negative. But the District of Columbia has devised a difference, that being, the latter is taxed while the former is not.

Also, there is no tax imposed upon a District wholesaler selling to the United States government, the District of Columbia government and to the instrumentalities of both. At the hearing in the District of Columbia Tax Court spe-

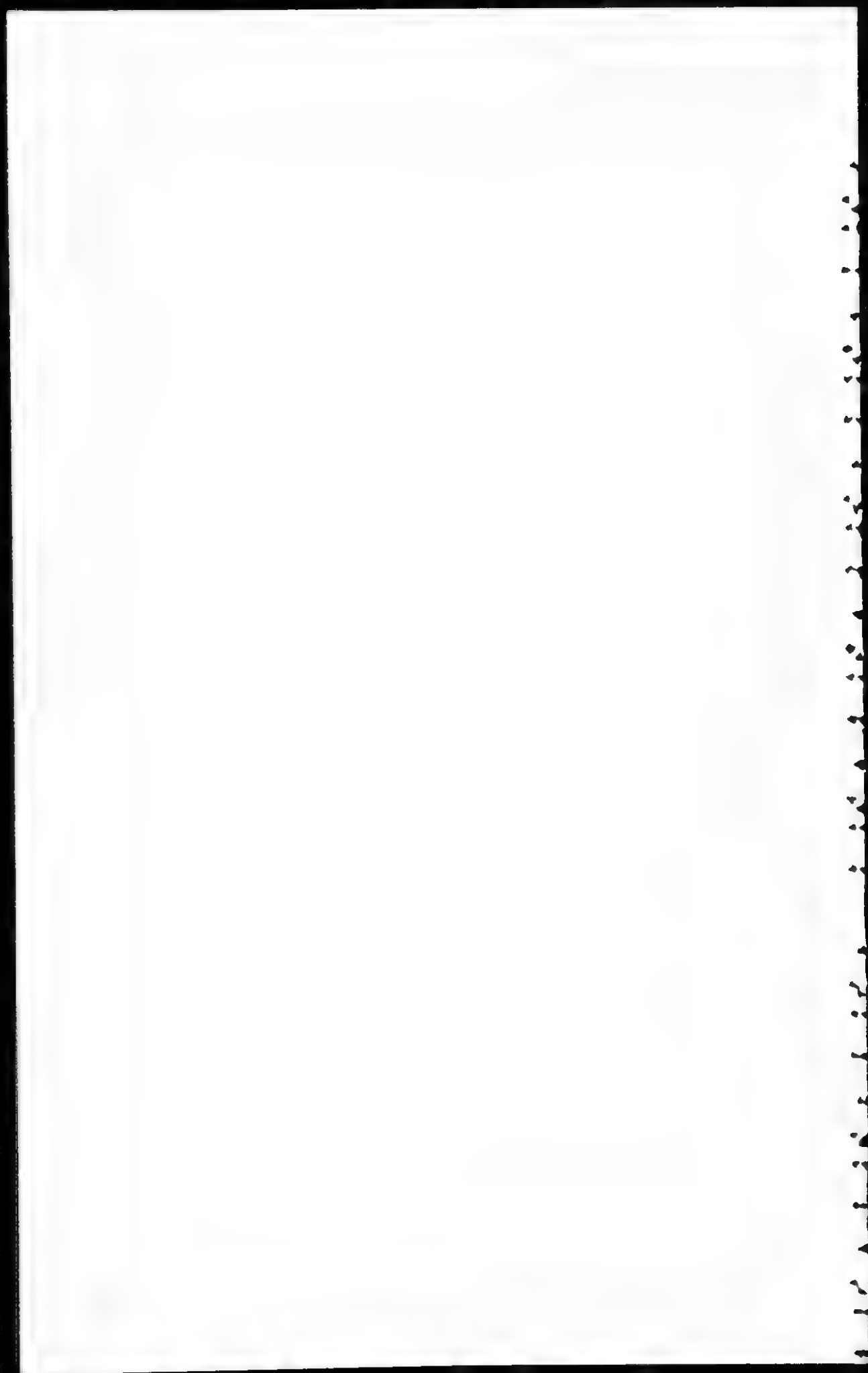
cific questions were asked by respondent as to why these governmental units were not taxed. An official for the District of Columbia answered, that it was the opinion of the District of Columbia Corporation Counsel that these bodies were exempt from any taxation. (JA 40-47)

The assessment and non-assessment between District wholesalers and outside wholesalers especially points up discriminatory conduct on the part of the District of Columbia. In tax law inconsistency is tantamount to illegality. Therefore, the opinion of the District of Columbia Tax Court finding the assessment erroneous must be affirmed.

CONCLUSION

For the reasons embodied in the foregoing argument, that (1) it was never the intention to subject resident foreign officials to the payment of taxes either directly or indirectly, (2) that the subject imported alcoholic beverages were never within the jurisdiction of the District of Columbia for tax purposes, (3) that the tax assessment is invalid as a tax upon an instrumentality of the United States government and (4) that the tax assessment is invalid, illegal and erroneous, because of the discriminatory nature of its application, the opinion of the District of Columbia Tax Court should be affirmed in all respects.

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BRIEF FOR AMICUS CURIAE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,833

DISTRICT OF COLUMBIA, *Petitioner*

v.

INTERNATIONAL DISTRIBUTING CORPORATION, *Respondent*

**On Petition for Review of a Decision of the District of
Columbia Tax Court**

United States Court of Appeals

for the District of Columbia Circuit

FILED SEP 24 1963

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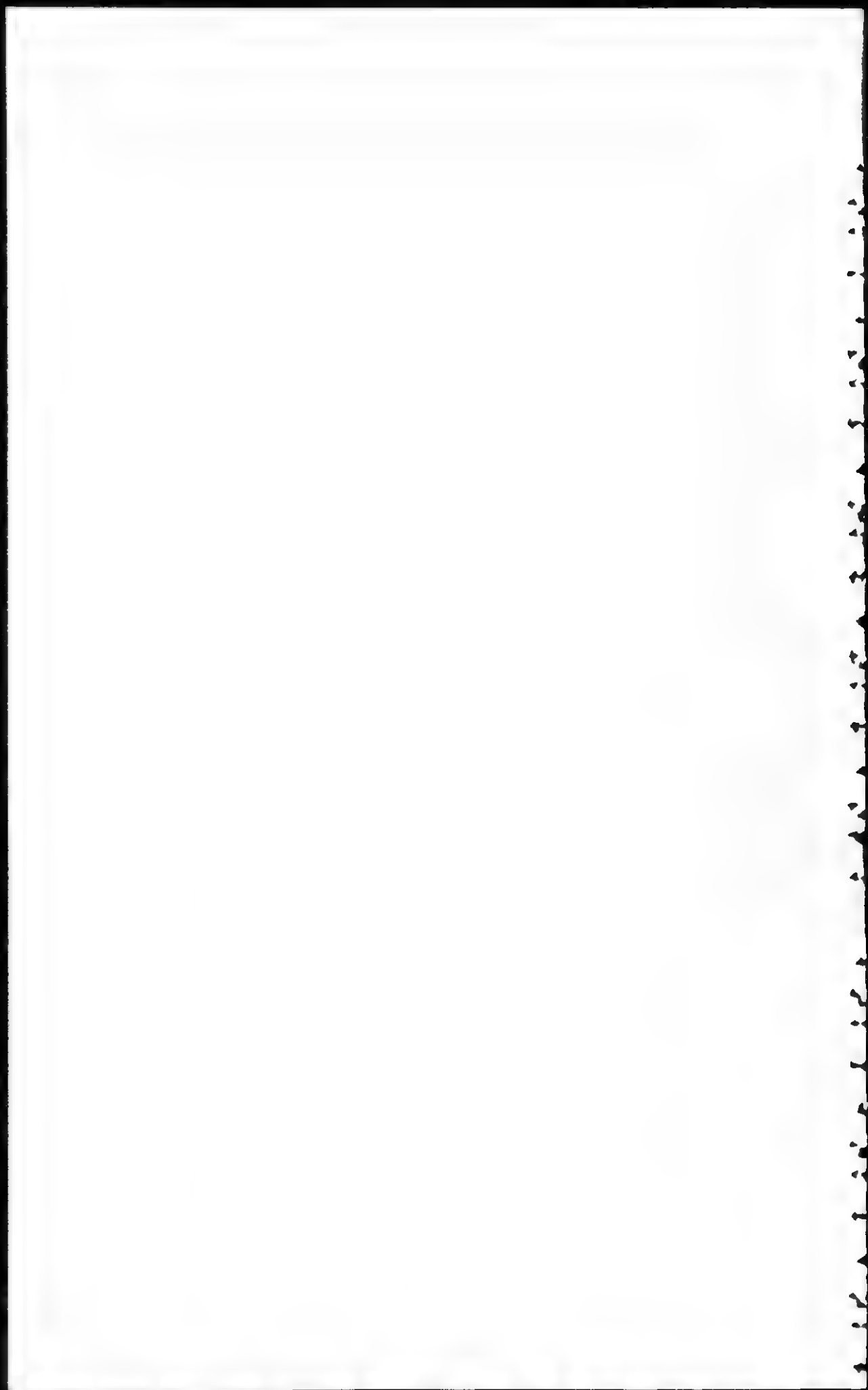
Attorneys for amicus curiae.

Marrin & Sneed Sales Corporation



STATEMENT OF QUESTION PRESENTED

Was not the District of Columbia Tax Court correct in deciding that the District of Columbia had no authority to assess taxes (under the District of Columbia Alcoholic Beverage Control Act, D. C. Code Sec. 25-124 (a) and (c) on liquor sold to embassies and international organizations from a stock held in bond continuously from its arrival in this country until such sale?



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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,833

DISTRICT OF COLUMBIA, *Petitioner*

v.

INTERNATIONAL DISTRIBUTING CORPORATION, *Respondent*

On Petition for Review of a Decision of the District of
Columbia Tax Court

BRIEF FOR AMICUS CURIAE

STATEMENT OF INTEREST

This brief is filed by Marvin & Snead Sales Corporation, a wholesaler (D. C. Permit No. P-3577), importer (Permit No. 1-762), and distributor (License Class A-2249) of alcoholic beverages.

Marvin & Snead Sales Corporation is a Delaware corporation, chartered March 21, 1935, and doing business at 219 "G" Street, N.W., Washington, D. C.; the corporation is engaged in selling alcoholic beverages from United States customs bond to embassies and personnel of inter-

national organizations and foreign armed services (three generally tax exempt classes of purchasers under Federal law).

This brief is filed herein pursuant to the Order of this Honorable Court dated June 13, 1963.

STATUTES AND REGULATIONS

59 Stat. 669 (1945), 22 U.S.C.A. 288 (a):

International organizations shall enjoy the status, immunities, exemptions and privileges set forth in this section, as follows: . . . (d) Insofar as concerns customs duties and internal revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith . . . the privileges, exemptions and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments.

63 Stat. 666 (1949), 19 U.S.C.A. 196 (a):

Set forth in Respondent's Brief, p. 4.

District of Columbia Alcoholic Beverage Control Act of 1934:

D. C. Code, Sections 25-124 (a) and (c):
Set forth in Petitioner's Brief, pp. 6-7.

REGULATIONS

District of Columbia Alcoholic Beverage Control Regulations:

Regulation 2-146, March 13, 1949, set forth in Petitioner's Brief, p. 9.

STATEMENT OF THE CASE

Amicus Curiae agrees generally with the statement of the case by petitioner and the counter statement by respondent but would emphasize the specific findings of the court below: (1) that from the time of the arrival of the

alcoholic beverages in this country until the time of disposition by sale to foreign embassies and international organizations the said beverages are under the exclusive control of agents of the United States Government (J. A. 70); (2) that upon such sale and withdrawal from Federal control no Federal tax or duty is imposed (J. A. 70); (3) that the alcoholic beverages in question were in fact sold to said embassies and international organizations prior to withdrawal (J. A. 71); and, (4) that no tax was imposed by the District of Columbia Alcoholic Beverage Control Act until said beverages were withdrawn from exclusive Federal control. In other words, the petitioner assessed a tax only after the goods passed from exclusive Federal control without the imposition of any Federal tax or duty to the exclusive control of the purchasing embassy or international organization.

SUMMARY OF ARGUMENT

The decision of the District of Columbia Tax Court filed in this cause January 30, 1963, which determined that the deficiency in alcoholic beverage excise tax assessed and collected from the respondent was erroneously assessed and that respondent is entitled to a refund of the said taxes, was correct and should be affirmed for the reasons stated in said decision and in the Findings of Fact and Opinion also filed therein on January 30, 1963.

Further, in the light of applicable international law and Congressional enactments pertaining to diplomatic envoys in the United States and in the Nation's Capital, the District of Columbia without warrant in law and contrary to Congressional intent assessed against the respondent, a wholesale liquor dealer possessing a Federal Importer's Permit, and licensed under the District of Columbia Alcoholic Beverage Control Act of 1934, as amended, alcoholic beverage taxes on sales made by respondent to embassies and international organizations from a stock of beverages in a United States customs bonded warehouse.

ARGUMENT

I

**Congress, in Enacting the Alcoholic Beverage Control Act
(D. C. Code, Sec. 25-124), Did Not Empower the District of
Columbia to Assess the Tax in Issue**

Amicus Curiae takes the position that despite the lack of an express provision in the statute (D. C. Code Sec. 25-124) specifically exempting from tax sales of alcoholic beverages to foreign embassies and international organizations, it is the clear congressional mandate that such transactions are not subject to tax. Petitioner, in its brief, views the problem in a totally mechanistic and unsophisticated way. In substance, it contends that the respondent "imported" alcoholic beverages into the District of Columbia, that Sec. 25-124 (a) and (c), D. C. Code imposes a tax payable when the goods are sold regardless of the fact that an embassy or international organization is the purchaser. This, it is submitted, is a gross oversimplification. It ignores accepted principles of international and domestic law relating to the favored tax status of representatives of foreign polities. It further ignores the technical structure of the statute in question which only purports to levy a tax when there is a sale—thus making the status of the purchaser of essential importance. Lastly it ignores clearly expressed congressional policy which bears squarely on a reasonable interpretation of the statute.¹

Amicus Curiae submits that analysis of the three factors which are ignored in petitioner's brief compel the conclusion that the District of Columbia has no power to tax in the circumstances of this case.

¹ Learned Hand, in another context, warned of a simplistic approach to statutory interpretation: "It is quite true . . . that as the articulation of a statute increases, the room for interpretation must contract; but the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create." *Gregory v. Helvering*, 69 F. 2d 809, 811 (C.C.A. 20, 1934).

A. International law is part of the law of the United States, *Hilton v. Guyot*, 159 U.S. 113, 164, 40 L. Ed. 95, 108, 16 S. Ct. 139 (1894); *The Paquette Habana*, 175 U.S. 677, 700, 44 L. Ed. 320, 328 (1899); see also I Hyde, *International Law Chiefly as Applied and Interpreted by the United States*, 2d ed., Sec. 5; Restatement Foreign Relations Law of the United States (The American Law Institute—Proposed official draft), Sec. 2. In *The Paquette Habana*, Mr. Justice Gray stated:

International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the custom and usages of civilized nations.

The fact that Congress passed the Alcoholic Beverage Control Act, D. C. Code, Sec. 25-124 (a) and (c), does not preclude resort to international law as an interpretative aid in defining its scope and meaning. The Supreme Court has made this crystal clear. In *MacLeod v. U. S.*, 229 U.S. 416, 57 L. Ed. 1260 (1913), the court in passing on the applicability of a statute requiring payment of duties by ships during the military occupation of the Philippines, held that the statute did not apply to ships entering ports held by a de facto insurrectionary government. International law compelled this conclusion. The court stated, 229 U.S. at 434, 57 L. Ed. at 1268:

The statute should be construed in the light of the purpose of the government to act within the principles of international law, the observance of which is so essential to the peace and harmony of nations . . .

B. All authorities agree that international law accords a generalized immunity from taxation and customs duties to representatives of a foreign state. II Hyde, *supra*,

Sec. 440-441; 4 Hackworth, Digest of International Law, 566-596; I Oppenheim, International Law, 8th Edition by Lauterpacht, Sec. 394, page 802.

The only question here is the extent of the immunity, Petitioner argues (Brief 17-18) that the Alcoholic Beverage Control Act, D. C. Code, Sec. 25-124 (a) and (c), imposes the tax on the respondent who "was the owner and importer into the District of the alcoholic beverages sold by it and upon which the taxes here in controversy were imposed." The inference is that any consideration of diplomatic immunity from taxation is irrelevant. This argument is wide of the mark.

Amicus Curiae contends that the immunity from tax depends on the nature of the tax and the consequent burden it places on the diplomat. The tax in question here is not in terms imposed on respondent but on the goods themselves by D. C. Code, Sec. 25-124 (a). This is reiterated in Sec. 25-124 (c) which speaks of the "tax imposed upon the quantity of beverage subject to taxation." Since beverages cannot pay taxes, the statute sensibly throws the burden of collecting the tax on respondent but not the burden of the tax itself. Congress quite obviously was aware of the basic business reality that the tax must be passed on to the ultimate consumer as part of the purchase price.¹

Congress should not be expected to clutter the statute with its understanding that business survival depends on making a profit. And making a profit, in turn, may be and often is dependent on passing the tax to the consumer—

¹ Compare D. C. Sales Tax, Sec. 47-2602, 2603, D. C. Code, which imposes the tax directly on the vendor with a duty of reimbursement on the vendee. Diplomats do not pay the D. C. Sales Tax because of their recognized immunity. Thus they are not required to reimburse the vendor on sales made to them. It is common knowledge that the vendor is thereby relieved from his statutory liability to pay the tax which is imposed directly on him. It is clear, therefore, that the vendor's tax shelter is directly traceable to the purchaser's diplomatic immunity.

e.g., where the difference between the cost to respondent and the price to the purchaser is equal to or less than the amount of the tax.

Common sense, therefore, requires that it be recognized that in imposing the tax it was recognized that ultimately the consumer would bear the burden. If the consumer is a diplomat, this is tantamount to direct taxation in violation of accepted international law and usage. This realistic view has been adopted by the Treasury which has considered itself bound by such law even though the revenue statute it was administering did not carve out a specific exemption for foreign representatives. The following letter from Acting Secretary of the Treasury Hanes to Secretary of State Hull, October 3, 1938, is illustrative and clearly sets forth the applicable law (4 Hackworth, *supra*, 570):

. . . duly accredited diplomatic representatives of foreign governments, members of their families living with them and members of their households, including attaches, secretaries, clerks and servants not citizens of the United States, are entitled to exemption from payment of internal revenue taxes when such taxes would fall directly upon such persons. The exemption also extends to the manufacturers' miscellaneous excise taxes where any such person is a party to the taxable transaction and it may be assumed that the burden of the tax would fall directly upon him. The exemption does not extend to cases where the person entitled to exemption is not a party to the taxable transaction, such as in the case of the purchase by a diplomatic representative of an automobile from a dealer. The tax imposed by Title IV of the Revenue Act of 1932 on the manufacturer, producer or importer having accrued and become payable prior to the purchase, no exemption is available.

The exemption also extends to the stamp taxes imposed under Title VIII of the Revenue Act of 1926, as amended, where the person entitled to exemption is a party to the transaction which is made the subject of the tax, and applies notwithstanding the fact that

the tax is imposed on either party to the transaction. In such case the transaction itself is exempt, for if the tax were to be asserted against the non-exempt party, the burden of the tax could be shifted to the exempt party, and such assertion of the tax would be contrary to the rule of International Law under which foreign diplomatic representatives are entitled to exemption not only from the tax but from the direct burden of the tax.

The District of Columbia which is completely under the control of Federal Government should operate within the same limits.

It follows that Sec. 2-146 of the District Alcoholic Beverage Control Regulations is invalid insofar as it attempts to reserve a tax on sales to embassies and international organizations.

C. Congressional policy in this general area is clearly stated in the following statutes which recognize the overriding necessity and, indeed, the obligation grounded in international law and usage of according liberal exemptions.

1. International Organizations Immunities Act, Sec. 2, 59 Stat. 669 (1945), 22 U.S.C.A. Sec. 288a provides:

International organizations shall enjoy the status, immunities, exemptions, and privileges set forth in this section, as follows: (d) Insofar as concerns customs duties and internal revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith . . . the privileges, exemptions and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments.

This statute was enacted to put international organizations on a parity with foreign countries with respect to taxation regardless of whether the tax is on the vendor or the purchaser. It is notable that the Congress in the last clause quoted makes reference to foreign countries as the criterion for determining the scope of the immunity. This can only be determined from international law and usage.

There is no other source. Nowhere has Congress codified the immunities of foreign countries. These have always been part of our law as derived from international law and usage. They have been accorded and administered as such by the executive branch. Congress, in enacting statutes dealing with customs duties and internal revenue, has always tacitly recognized this. Thus it was never thought necessary to enact a "Foreign Nations Immunities Act."

It is submitted that Sec. 25-124 (a) and (c) should be viewed against the same backdrop of congressional understanding. It is absurd to view the entire statutory scheme as according complete freedom from tax to foreign nations and international organizations everywhere in the United States except the District of Columbia—where all ambassadors reside and most international organizations have their headquarters.

2. 63 Stat. 666 (1949), 19 U.S.C.A. Sec. 196(b) allows withdrawal of articles from warehouses for consumption in the United States "free of all revenue duties and internal revenue taxes imposed upon or by reason of importation" by members of the armed forces of any foreign country on a reciprocal basis. Again it is immaterial whether the tax is on the vendor or purchaser.

II

The District of Columbia Tax Court Was Correct in Holding That (1) the Alcoholic Beverages in Question Were Beyond the Jurisdiction of the District of Columbia While in Bond and (2) Were Brought Into the District Not By Respondent But by the Embassies and International Organizations Which Purchased the Same

Although the Court below found as a fact that the goods were imported into the United States by petitioner (J. A. 70), it held that they were beyond the jurisdiction of the District as subjects of taxation while in U. S. customs bond, were sold prior to withdrawal therefrom (J. A. 71),

and thus were brought into the District, not by respondent but by the purchasing embassies and international organizations who owned the same.

Amicus Curiae submits that this holding is clearly correct.

A reading of Sec. 25-124 (a), D. C. Code makes it clear that there must be an importation into the District before any tax may be imposed. Transportation into the District by means of a bonded common carrier is not an importation in the sense that the District's power to tax attaches as soon as the transporting vehicle crosses the District line. Of crucial importance is the fact that the goods are in bond, i.e., in the exclusive control of the United States. The case of *Wells Fargo Nevada National Bank of San Francisco v. Haslett Warehouse Company*, 60 Cal. App. 225 (1922), stands for the proposition that goods stored by a warehouseman in a bonded warehouse under the treasury regulations and the law applicable to bonded warehouses (whereby the goods are in joint custody of the warehousemen and customs collector) are nevertheless "subject to the exclusive control of said collector with respect to the delivery of said goods from the bonded warehouse."

This court has held in another context that goods not in bond may flow in and out of the District without being subject to District power. *Embassy Dairy v. Camalier*, 93 App. D. C. 364, 211 F. 2d 41 (1954). A fortiori, these goods which, at all times in question until sale to embassies and international organizations, were subject to superior Federal sovereignty should not be considered as being subject concomitantly to the inferior power of the District (a mere satrapy of the United States). This is particularly true where the goods are shipped here for consumption in places physically within the confines of the District but beyond its governmental power, viz., embassies and headquarters of international organization.

Congress, in enacting Sec. 25-124 (a) could only have intended goods originally subject to its exclusive control to be subject to District taxing authority after the Federal Government had relinquished exclusive control. No doubt, for that reason, it is provided in Sec. 25-124 (c) (1) that the tax is only due when the goods are sold. In the instant case, as the lower court found, the goods were sold prior to withdrawal from exclusive Federal control in bond (J. A. 71). Title had passed to the embassy or foreign organization at whose direction the goods were then delivered to a designated place. The goods are thus taken into the District by virtue of the authority of their new owner. No Federal customs duties or excise taxes were exacted (J. A. 70). This importation into the District is exempt by virtue of the provision found in Sec. 25-137, D. C. Code which provides:

(a) It shall be unlawful for anyone, except a public or common carrier or the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter, to transport, import, bring, or ship or cause to be transported, imported, brought, or shipped into the District of Columbia any wines, spirits, or beer in a quantity in excess of one gallon at any one time.

(b) No public or common carrier shall transport or bring into the District of Columbia, wine, spirits, or beer in a quantity in excess of one gallon at any one time for delivery to any one person in the District of Columbia other than the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

(c) The provisions of this section shall not apply to bona fide possessors of old stocks who are moving into the District of Columbia nor to embassies or diplomatic representatives of foreign countries, nor to wines imported for religious or sacramental purposes, nor to wine, spirits, and beer to be delivered to the holder of manufacturer's, wholesaler's, or retailer's license issued under this chapter."

In all other cases of withdrawal from bond the federal taxes (customs and excise) are paid by respondent prior

thereto and the goods remain the property of respondent. They are sold as its goods after being imported into the District from exclusive Federal control. (J. A. 19-20). Title remains in the respondent until sale to a retailer or other non-exempt purchaser. There is thus a crucial difference between sales to embassies and international organizations and other types. In the latter, the respondent causes its own goods to be brought out of exclusive Federal control and into the flow of commerce in the District. In the former the embassy or international organization is bringing its goods, not respondent's, into the District. The statute was only intended to apply in the former case.

Congressional intent alone would seem to dispose of the question of taxation involved in this case. In 1934, following repeal of the Volstead Act, Congress, in the exercise of its plenary powers over District of Columbia affairs clearly indicated that imports or sales involving foreign sovereigns should not be subjected to the burden of taxes under the District of Columbia liquor excise statute. This policy has been consistently followed legislatively for almost thirty years. When the latest amendments were made to the statute in 1961, Congress put the taxation of whiskey sales on the same basis as beer, see *American Sales Company v. District of Columbia*, 110 U.S. App. D.C. 258, 292 F. 2d 751 (1961); the 1961 amendments did not purport to tax sales to foreign sovereigns; if Congress had wanted to, it would have done so because the issue was well known.

It seems to us that the regulation of the Commissioners (D.C. Regulation 2-146) is perfectly valid insofar as it permits wholesalers to deal with embassies as vendees, but that the same regulation in its proviso is clearly violative of the statute whether the statute be interpreted purely as municipal law, or be interpreted in the light of international law.

CONCLUSION

For the reasons stated, the Findings of Fact, Opinion and Decision of the District of Columbia Tax Court should be affirmed in all respects.

Respectfully submitted,

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Certificate of Service

This is to certify that a copy of the above Brief was mailed, postage prepaid, this day of September, 1963, to Robert E. McCally, Esquire, Asst. Corporation Counsel, District Building, Washington 4, D. C., attorney for Petitioner, and Milford F. Schwartz, Esquire, 1511 K Street, N.W., Washington, D. C., attorney for Respondent.

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